No. 3676

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. VIII

Pages 3697 to 4224, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of Walter M. Bickford.)

Q. Yes, it seems so.

A. The next is abstract Number 48, and is an abstract of title to the land of Charles C. Snyder. The next is abstract Number 49, and is an abstract of title to the land of May Hawthorne. The next is abstract Number 50, and is an abstract to the land of Robert Starkie. The next is Number 51, and is an abstract of title to the land of John B. Reeve. The next is abstract Number 52, and is to the land of Mary A. Starkie. The next is abstract Number 53, and is an abstract of title to the land of Albert Ehle. The next is abstract Number 54, and is an abstract of title to the land of Eliza A. Reeve. The next is abstract Number 55, and is an abstract of title to the land of John Murtaugh. The next is abstract Number 56, and is an abstract of title to the land of Effie M. Kilburn. The next is abstract Number 57, and is to the land of Vital Cyr. The next is abstract Number 58, and is an abstract of title to the land of Levi B. Cyr. The next is abstract Number 59, and is abstract of title to the land of Leonard Barrott. The next is abstract Number 60, and is an abstract of title to the land of Edgar Lehman. The next is abstract Number 61, and is an abstract of title to the land of Belle Bryan Gillies. The next is abstract Number 62, and is an abstract of title to the land of Edward Dodd and Cora Dodd. The next is abstract Number 63, and is an abstract of title to the land of Lelia T. Bryan. The next is abstract Number

(Testimony of Walter M. Bickford.)

64, and is an abstract of title to the land of Harriet Bryan. The next is abstract Number 65, and is abstract of title to the land of Nellie J. Ehle. There is another one here, and I suppose that will be 65 and ½. That is also an abstract of the title to the land of Effie M. Kilburn.

By Mr. WALSH.—Now, your Honor, we offer severally the abstracts referred to, in evidence, those mentioned by the witness in his testimony, and numbered from 2 to 65 and ½.

By Mr. MAYNARD.—I renew my objection to the introduction of these abstracts, and to their being received in evidence in this case, for the reason that they are irrelevant and immaterial to any issue joined by the pleadings in this case, for the reason further that they have no tendency whatever to disprove the allegations in the bill of complaint, nor to prove any of the allegations in the answer of the defendant, and especially they have no tendency whatever to sustain any allegation therein that the defendant is a bona fide purchaser for value of the lands named in these abstracts of title, and I now move that all of the testimony given by Judge Bickford, relative to the examination made by him of these abstracts, and the abstracts themselves, be stricken out of the record for the reasons already stated.

By The EXAMINER.—The abstract will be marked Exhibits 207 to 275, inclusive.

(Testimony of Walter M. Bickford.)

Q. Now, Judge, I observe from these abstracts that the conveyances from Cobban to Clark are not shown—I wish you would state what was next done in the course of your connection with the matter, in connection with your approbation of the abstracts.

By Mr. MAYNARD.—I object, and I desire for the purpose of avoiding the necessity of making the objection to every question, to have the same appear as a continuing objection. That counsel for the Government objects to the questions as asked by counsel, and any answers that may be given by Judge Bickford, to the same, for the reason that it is entirely irrelevant and immaterial to the issues in this case, and has no tendency whatever to disprove any of the allegations in the bill of complaint, or to prove any of the allegations set forth in the defendant's answer, relative to his being a bona fide purchaser for value.

It may be understood, Brother Walsh, may it not, that this is a continuing objection as to all that was done relative to the matter, or would you like to have me renew my objections. I don't know just exactly what to do with reference to it.

By Mr. WALSH.—There is no objection to your having a continuing objection to Judge Bickford's testimony, upon the ground that it is irrelevant and immaterial.

A. I delivered the abstracts of title to Mr. A. H. Wethey, with my approval of those that I have read.

(Testimony of Walter M. Bickford.)

Subsequent to that time a deed was presented to me—or rather at various times deeds were presented to me, which would be a more accurate way of putting it—and the abstract of title having in my judgment shown that the titles to the land mentioned in the abstracts were in Mr. R. M. Cobban, I approved the same. The deeds from R. M. Cobban were finally presented to me to examine to see if it was in proper form, and if it contained a proper description of the land that was to be conveyed to Mr. Clark, and after an examination of them, I wrote a letter—I either wrote a letter or presented the deed in person to Mr. Wethey and told him that the deed was in proper form and conveyed the title to Senator Clark.

Q. In how many cases were deeds made out, to the lands that are mentioned in the bill of complaint?

A. My recollection now is that there were nine or ten.

Q. How many?

A. I think ten deeds. I think there were ten in my office which covered the lands that I have described.

Q. The lands that you have described are embraced in these ten deeds? (Counsel refers to deeds on table before the witness.)

A. In these ten deeds, yes, sir.

Q. These ten deeds, as I understand you, then, embrace other lands than those mentioned in the bill of complaint?

(Testimony of Walter M. Bickford.)

A. Yes, sir, they do embrace other lands than those mentioned in the bill of complaint.

By Mr. WALSH.—We now offer the deeds mentioned by the witness, in evidence.

By Mr. MAYNARD.—I object to the deeds mentioned being introduced in evidence, or to their being received in evidence, for the same reason assigned by me to the reception in evidence of the abstracts of title named by the witness, upon the ground that they are entirely immaterial and irrelevant to the issues raised by the pleadings in this case, and have no tendency whatever to disprove the allegations set forth in the bill of complaint in this case, and in no sense have they any tendency whatever to sustain the allegations set forth in the defendant's answer, that he is a bona fide purchaser of these lands for value.

Q. And from whom did you get these abstracts, Judge?

A. I think the abstracts were handed to me by Mr. Wethey, and perhaps in one or two instances by R. M. Cobban.

Q. And from whom did you get the deeds?

A. My recollection is that the deeds came to me from Mr. Wethey.

Q. Now, I observe, Judge, that these abstracts are prepared by one Levi Davis, of Anaconda, Montana, and by the Missoula County Abstract county. Do you know Levi Davis?

(Testimony of Walter M. Bickford.)

A. No, not personally, but I have had considerable correspondence with him for the past few years, and I also know these people that are connected with the Missoula County Abstract Company.

Q. Do you know what the business of Levi Davis is?

A. He is an abstractor, and is engaged in preparing abstracts in business transactions concerning lands in Deer Lodge County.

Q. And who was the Missoula Abstract Company?

A. I don't know who compose the company now, but I know it was previously managed and controlled by Judge W. J. Stevens, of Missoula, and to the best of my knowledge, he controls the business of the Missoula Abstract Company.

Q. How long has that company been engaged in the abstracting business, so far as you know?

A. Since 1885 or 1886. At the time the company was organized I was a partner of Judge Stevens in the practice of law in Missoula.

Q. What, if anything did you do or have to do with the actual handling of the money that was paid in consideration of these transfers?

A. Nothing whatever to do with the actual handling of the money. I did make inquiries, however, to ascertain what the exact consideration was, in order to ascertain what stamps—what revenue stamps were necessary in order to have a sufficient number of stamps to comply with the revenue laws of the United States, and in that way, and in some instances, in seeing the checks that were given for the land by Mr. Wethey or by Sena-

(Testimony of Walter M. Bickford.)

tor Clark, I know that the consideration mentioned in the deed was the exact consideration which was paid for the lands mentioned in that particular deed.

Q. Now, Judge, I wish you would state what knowledge or information or notice of any character you had to the effect that there was any infirmity in any of these entries made by the persons who appeared to have made the entries on the abstracts.

A. I had no knowledge or information whatever, and I had had a good deal of experience and was personally acquainted with the officers of the United States land office at Missoula, having known them for a number of years intimately in business and social relations, and I knew them to be men of unusual ability and unquestioned honesty and integrity, and that they would not for one moment, under any circumstances countenance anything that was wrong or unlawful or fraudulent, and the fact that these men, whom I have known so long, had affixed their signatures to the final receipts showing that final proof had been made upon this land, was proof to me that they had been satisfied of the correctness of the proof and there was nothing in the abstract of title showing that there was controversy concerning the land whatever.

Q. What knowledge or information of any character did you have concerning any relations which existed between Mr. Cobban and any of these entrymen of any agreement that existed between them?

A. I had no knowledge whatever, sir.

(Testimony of Walter M. Bickford.)

Q. Had you any information upon the subject whatever?

A. I had no information of any kind concerning the matter.

Q. Were you ever present, Judge, at any negotiations had between Mr. Clark and Mr. Wethey and Mr. Cobban, Mr. Wethey representing Senator Clark in the matter?

A. I was on two or three different occasions.

Q. And wish you would tell, Judge, substantially what the negotiations were.

A. I couldn't give the exact language used upon that occasion.

Q. Had you inquired about it to ascertain what the purport or the substance of the negotiations were?

A. Mr. Cobban represented to Mr. Clark that he was the owner of certain timber lands in Missoula and Deer Lodge counties, and that he was willing to sell the lands for a certain price; that the lands were valuable for the timber upon them, and that he would be willing to sell at a price which he mentioned. My recollection is that the price of the lands was not so much per acre, but so much per thousand feet for the quantity of timber contained upon any particular tract of land. I know that from the conversation had at that time with Mr. Cobban, Mr. Cobban was not Mr. Clark's agent for any purpose whatever, but that he was, or purported to be the owner of lands and desired to sell them for a certain price, which was to be agreed upon between him and the person with whom he was negotiating.

(Testimony of Walter M. Bickford.)

Q. Now, Judge, you spoke about having been present at several times. Did these several conversations on these several occasions have relation to the same purchase of lands or to different purchases?

A. Oh, to different purchases. The first purchase that was made, I think, was the one when Senator Clark was present with both Mr. Wethey and myself, and the first purchase, as I supposed, was the only purchase that was to be made, and so was the only one that was under discussion at that time, and nothing was said about any other land or any future purchases, or of acquiring the title to other lands; it was simply concerning the land that was under discussion there at that time.

Q. Now, what was the quantity of land that was under discussion at that time?

A. I could not tell you the quantity.

Q. And could you give it with reference to the amount of timber that was to be conveyed?

A. No, sir, I could not.

Q. Now, I wish you would state whether during the course of these first conferences that you attended, terms were arranged upon which the sale was to be made, or whether the matter was to be left open for further negotiation at that time?

A. I don't think that the terms were arranged at that time.

Q. Now who was present at the subsequent negotiations, on the occasion of the subsequent purchases that you have spoken of, when were you present?

(Testimony of Walter M. Bickford.)

A. My present recollection is that Mr. Wethey was present, and that he called me in to talk the matter over with me, and I don't remember that Senator Clark was present at more than one or two of these conferences. The matter was apparently left to Mr. Wethey for his action. He was the personal representative of Senator Clark. In fact, I think at the time some of these purchases were completed that Senator Clark was not in Montana.

Cross-examination.

(By Mr. MAYNARD.)

Q. You formerly practiced law in Missoula, did you not? A. I did, yes, sir.

Q. When did you leave there and move to Butte?

A. In the spring of 1898.

Q. How long did you practice law in Missoula, Mr. Bickford? A. Something over fourteen years.

Q. Did you know, while you were a citizen of Missoula, did you know Mr. Cobban?

A. I think I did, yes, sir.

Q. The acquaintance couldn't have been of an intimate character, could it?

A. No, sir, it was not of an intimate character, I had met Mr. Cobban, though, when I lived in Missoula.

Q. Did you know what his business was there?

A. Well, I don't remember that, Mr. Cobban carried on the business in Missoula while I lived there; I think his business operations were at that time confined to Butte; that is my recollection of it.

(Testimony of Walter M. Bickford.)

Q. He was buying up these lands the year after you came from Missoula, was he not?

A. What is that?

Q. I say, Mr. Cobban was buying up these lands the year after you moved from Missoula to Butte?

A. Why it appears from the abstracts of title that I have mentioned, that he was buying land down there, yes, sir, and I had understood from various sources that he was engaged in the real estate and money loaning business in Missoula.

Q. While you were living there in Missoula?

A. While I was living here.

Q. You had no business dealings with him while you were living in Missoula, did you?

A. No, sir, not that I now recall.

Q. When was the Western Lumber Company organized?

A. It was either in the spring of 1898 or the spring of 1899, I have forgotten which.

Q. Was it before or after you left Missoula?

A. It was after I left Missoula.

Q. How long after? A. I couldn't say.

Q What month in 1898 did you leave Missoula?

A. That is hard to say, because I had an office both in Missoula and in Butte during the summer of 1898, and my residence in Missoula—that is my home was maintained in Missoula until the year 1900, and my family remained there, as I now remember it, until 1900; so that I had an office in both places.

(Testimony of Walter M. Bickford.)

Q. Do you remember the testimony, and without going over the ground again, of the superintendent of the Western Lumber Company?

A. I don't think I do. You mean Mr. McLaughlin, don't you?

Q. Yes, sir.

A. I don't remember his testimony particularly.

Q. Relative to the organization of the company, and the election of the members.

A. I don't know as I remember his testimony with reference to that.

Q. Well, did you have much to do with the organization of the company? A. Yes.

Q. Of the Western Lumber Company, I mean.

A. Yes, sir.

Q. You were one of its directors, and the secretary or the treasurer, the secretary and treasurer?

A. No, just secretary.

Q. Senator Clark was the president and held the majority of the stock, did he not? A. Yes, sir.

Q. Well, don't you remember of the locations of the mills at the points referred to by Mr. McLaughlin?

A. Why, in an indistinct sort of a way, yes.

Q. Did you have business connections with him?

A. Oh, nothing only the regular business that is usually connected with a corporation.

Q. You had no personal knowledge of the construction of the mills? A. No, sir.

Q. That was done by others, was it?

(Testimony of Walter M. Bickford.)

A. Yes, sir.

Q. Do you know when they were constructed?

A. No, sir, I do not.

Q. Well, you knew of the fact that the company needed in the transaction of its business, this timber, did you not?

A. I knew that you couldn't run a sawmill without logs.

Q. And that you needed some logs, then, more than you had at the time of the construction of the mills and the organization of the company? A. No.

Q. You didn't know that?

A. No. I will say in explanation, as you don't seem to know the configuration of the country in Missoula county, that none of the timber upon the Blackfoot river is now or ever was tributary to any mill owned by the Western Lumber Company, and as a commercial proposition, none of the logs upon the Blackfoot river can be taken to any mill owned by the Western Lumber Company under present conditions, and sawed at a profit.

Q. Well, can you recall the first conversation that you had with Senator Clark relative to his buying these timber lands?

A. Which timber lands do you refer to?

Q. These that you have named in these abstracts and these deeds.

A. No, I do not, but I think the first conversation

(Testimony of Walter M. Bickford.)

that I had concerning it was the conversation which I detailed in my examination in chief.

Q. Do you know when that was?

A. It was in the office of Senator Clark or Mr. Wethey over Clark & Brother's Bank in the city of Butte.

Q. That is where it was; I said when it was.

A. No, I cannot fix the date from my recollection.

Q. Whether it was in 1898 or 1899?

A It was not in 1898, and it was not until about the month of July, I should say, perhaps the latter part of July of 1899.

Q. How are you able to fix that time when a moment ago you said you were not able to fix the time?

A. I am able to fix the time from the date on the deeds of R. M. Cobban to A. W. Clark, and I know itwas only a short time before that deed was executed and handed to me for examination that this conversation took place.

Q. You mean the first deed of Cobban to Clark, do you? A. Yes, sir.

Q. Wethey and Cobban and Clark were at the office when you were called over there, were they?

A. That is my recollection about it, yes, sir.

Q. Are you able to state that previous negotiations had not been had between Mr. Clark and Mr. Cobban?

A. I am, yes, sir.

Q How are you able to state that?

(Testimony of Walter M. Bickford.)

A. From the tone of the conversation that took place at the time I have mentioned.

Q. What do you mean by the tone of the conversation?

A. I mean the general trend of the conversation. I mean by that that the conversation was such a conversation as would be had between one man who had something that he wanted to sell, and another man who had some notion of buying it, but was uncertain as to whether he would buy it or not, or as to whether the price suited him or not.

Q. Other than that you have now stated, you have no knowledge on the subject, have you?

A. I have no knowledge that I at present call to mind concerning it.

Q. Do you know whether Cobban and Clark had ever met before?

A. I think they had, yes, sir. They didn't talk to me like strangers to each other, and I had known in a general way that Mr. Cobban had lived in Butte for a number of years, which is the home of Senator Clark.

Q. Do you know of your own knowledge, as to whether any business relations existed or as to what the business relations were that existed, if any, between the defendant, Clark, and Mr. Cbbban, while they were both residents of Butte and you a resident of Missoula.

A. I have no knowledge concerning their business relations whatever during the time that you have mentioned.

(Testimony of Walter M. Bickford.)

Q. You had no conversation with Mr. Cobban with reference to the ownership of these lands previous to your being called over to Senator Clark's office?

A. I had not.

Q. And, as a matter of fact, you did not know whether he was then the owner of the lands or not?

A. Only as I gathered the fact from the examination of the abstracts of title.

Q. Well, do I understand that there were abstracts of title presented to you at that first interview, when you were first called over to the office?

A. Either at that first interview or very shortly thereafter.

Q. You knew nothing about any of the facts or circumstances had between Mr. Cobban and these various entrymen and entrywomen, as I understand you?

A. No, no facts whatever.

Q. Did you ever have any personal acquaintance whatever with the entrymen or entrywomen mentioned in the bill of complaint?

A. There are so many of them that it is hard for me to say, but my impression is that I have known John B. Reeve, while living in Missoula county, and perhaps one or two others.

Q. Well, now then, I wish you would tell me again this particular purpose for which you were summoned over to Senator Clark's office, when you met the defendant and Cobban there?

A. The particular purpose was to inquire of me the

(Testimony of Walter M. Bickford.)

nature of the country on the Blackfoot river, having lived in that section for a considerable length of time, I supposed they thought I knew the country.

Q. Had you been up there?

A. Yes, sir, often.

Q. Well, now, just tell me right now, please, just in your own way, as to the character of that country.

A. Well, the Blackfoot valley is—the distance that I traveled it, is about eighty-five miles. I have been that far along the valley. For the first six or seven miles it is quite steep, the mountains on either side come close down to the river.

Q. Please name the river, Mr. Bickford?

A. The Blackfoot river, I said.

Q. And the Blackfoot river empties into what river?

A. The Missoula river forms a confluence with the Blackfoot river.

Q. At what point?

A. Immediately south of the town of Bonner, about a mile, and about six miles east of the town of Missoula.

Q. And that, you say, is about six or seven miles—the first six or seven miles it is a rough country?

A. Yes, starting towards the source of the river from Bonner; for the first six or seven miles it is quite narrow and steep, and the hills on each side are heavily timbered. At places the valley is wider than at others.

Q. Excuse me, Judge, you say that the hills are high? How high would those hills be from the level of the river? A. I never measured them.

(Testimony of Walter M. Bickford.)

Q. Well, in your best judgment, I mean?

A. I have no judgment about it, I couldn't tell you. I never went up there in my life, up the hills, they were so steep that you couldn't climb them; still, I have seen much higher mountains than they are.

Q. Well, go on, Judge.

A. Well, in going up the river by the usually traveled road, you follow the valley of the Blackfoot up to a point where you cross the river to the east side, then you leave the river and go over a country that is known as Camas Prairie, and on to the Potomac postoffice, a distance of twelve or fourteen miles, and then you cross the river again and strike off to the left, and travel over the hills, and strike the river at Clearwater, and at Clearwater the valley widens to a considerable extent and becomes practically treeless in the valley. There is no timber there down in the valley. Proceeding up Blackfoot valley again, it narrows, and then you reach a postoffice called Woodworth, at the mouth of Montour creek, and from Montour creek you go over to Ovando. I should judge the valley was in the neighborhood of eight or ten miles wide, with timber growing on the hills surrounding, and then the same kind of country appears over there as at Ovando. I don't remember the distance from Clearwater to Ovando.

Q. Then, how far is Ovando from Bonner?

A. I don't know.

Q. Well, your knowledge, as I understood you to say, extended for eighty miles up the Blackfoot river?

(Testimony of Walter M. Bickford.)

A. Well, when I went up the Blackfoot river, I went to what they call Lunds Ranch on the north fork, and then I went on across the range to the other side.

Q. Well, as you say, these lands at this interview, where were they situated, how far would they be from Bonner?

A. I couldn't tell that because I am not acquainted with the sections, townships and ranges of the country.

Q. But all of this timber that was bought was growing on the sides of these high rocky mountains, were they not?

A. I didn't testify that they were rocky, because I don't know anything about the character of the land, never having been upon them. The timber would hide the ground, and you wouldn't know the character of the ground upon which the timber grew.

Q. Well, very well, that was one reason for your being called in. Now, what was the other one?

A. Well, I don't know as I could say, for the reasons that I have stated, I suppose.

Q. Well, that is the only reason that you can give, is it?

A. That was one reason, perhaps, and the other reason was that I was called upon to pass upon the abstracts of title when they were given to me. They were given to me shortly afterwards. Why I say it in that way is, because I don't know and I didn't know at that particular time, that the abstracts of title were handed to me; I didn't know that there were any abstracts of

(Testimony of Walter M. Bickford.)

title, but I do know that they came into my possession shortly after that conversation took place.

Q. Did you know Mr. McLaughlin at that time?

A. Yes, sir.

Q. He was one of the directors of your company, was he not? A. I think he was, yes sir.

Q. And superintendent of it?

A. Yes, sir, superintendent of the Western Lumber Company.

Q. Did you know at that time what Mr. McLaughlin had done with reference to having seen Mr. Cobban in the interest of Senator Clark?

A. No, sir, I did not.

Q. You knew nothing of the fact that Senator Clark had persons in the valley and up in the mountains, estimating jointly with Mr. Cobban's estimator?

A. Mr. Clark had nobody in the timber estimating jointly with Mr. Cobban's estimators at that time.

Q. So far as you know?

A. I know that he did not, and I state it positively because I know the date or about the date when the estimators were sent into the valley.

Q. Well, what do you know about that?

A. Well, I know that estimates were sent down to Butte, and were examined by me after the time when these negotiations for the sale of the land commenced.

Q. Who were they signed by?

A. I don't know.

Q. Who did you receive them from?

(Testimony of Walter M. Bickford.)

A. I received them from and looked them over with Mr. Wethey.

Q. Well, that was a purely business proposition, wasn't it? A. Certainly.

Q. Well, why were you engaged in that?

A. I couldn't explain why, except perhaps knowing the country and having lived in that section of the country where timber operations had been carried on, and they had an erroneous idea that I knew something about timber estimating. This was done simply casually.

Q. That you knew was the land upon which the timber was growing, and it would seem that you were quite familiar with the situation?

A. Well, probably.

WALTER M. BICKFORD.

At this point a recess was taken until two o'clock P. M. of the same day.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, April 10th, 1902, 2 P. M.

Hearing resumed; the witness Bickford was called for further cross-examination by Mr. Maynard.

Q. As I understand you, Judge, you was called over there in your judgment first for the reason that you were familiar with the country and you could give some assistance on the estimate?

A. No, not on the estimate question. I never estimated any timber.

(Testimony of Walter M. Bickford.)

Q. Was it then the sole purpose for which you were called for the purpose of giving legal advice as to the legal quality of the papers that were submitted to you?

A. I can hardly say that, either.

Q. Well, what?

A. As I stated this morning, I gathered from the fact disclosed in the conversation that it was jointly to inquire what kind of country this was on the Blackfoot, and also to inquire concerning the titles to the property, and later to pass upon the abstracts if I had not got them at that time.

Q. These abstracts that you have offered in evidence are they the same abstracts that were presented to you at that time?

A. I say I don't know whether they were presented to me then or not.

Q. But when they were presented to you?

A. They were the same abstracts that were presented to me when they were presented to me, and contain my mark upon them.

Q. I have not had time to examine them in detail, but as I understand, they are all substantially alike?

A. Well, practically, yes, sir.

Q. All showing the issuance of duplicate receiver's final receipt to the entryman under the Stone and Timber Act, and a warranty deed from the entryman to Mr. Cobban, and the deed that you have offered are the deeds for the same land from Mr. Cobban to Senator Clark?

(Testimony of Walter M. Bickford.)

A. Yes, sir, but there is this distinction to be drawn: I do not pretend to say as to the abstracts in a wholesale way or under what law the entries were made, whether under the Timber and Stone Act, whether under the Pre-emption Act or under the Homestead Act; I could not pretend to say that. The abstracts themselves would show possibly under what law the entries were made, but I think a majority of them were made under the Stone and Timber Act.

Q. All that we are concerned about in this present inquiry were under the Timber and Stone Act?

A. Yes, I think so.

Q. And there were about how many?

A. I did not count them; sixty-five, I think, is the number.

Q. Have you any recollection as to how many more there were under the Stone and Timber Act?

A. No, sir.

Q. That are not named in the bill of complaint?

A. No, I haven't any knowledge of the number.

Q. And the substance of the whole matter is that thereafter, when these abstracts of title were submitted to you, you approved of them and approved of the deeds that were afterwards drawn up and executed by Mr. Cobban and wife to Senator Clark?

A. Yes, sir.

Q. And advised Senator Clark that the title which he obtained was a good title?

A. That was my understanding of it, yes, sir.

(Testimony of Walter M. Bickford.)

Q. And other than the mere legal acts that you did, you have but very little knowledge in regard to the details of the transaction of buying and purchasing?

A. Well, whatever details I have given heretofore are within my knowledge, on my examination in chief.

Mr. MAYNARD.—I think that is all for the present, until I have an opportunity to examine the abstracts; then, I reserve the privilege to recall Mr. Bickford.

Redirect Examination.

(By Mr. WALSH.)

Q. You were asked if you had any personal acquaintance with these entrymen and you replied that you might possibly have some acquaintance with Mr. Reeve. Among the other entrymen is Mrs. Lizzie T. Catlin. Do you know her?

A. Oh, yes, I have known Mrs. Catlin for a number of years, perhaps 15 years.

Q. She appears to be the wife of John B. Catlin. Do you know him? A. Yes, I know him very well.

Q. What business was he engaged in when you knew him?

A. When I first knew him he was in business in Stevensville in 1884. He remained in business in Stevensville for a number of years and was regarded as one of the foremost business men in town. Later he became the agent of the United States Government at the Blackfoot Agency, and my recollection is that he was also a member of the Legislative Assembly, and

(Testimony of Walter M. Bickford.)

has taken always a prominent part in Republican politics in Missoula and Ravilli county. He is a very prominent citizen down there and a man who is well esteemed. He became register or receiver of the United States land office at Missoula at the time the land office was created there, and remained in that position until his term expired, after which he became a land attorney and practiced in the United States land office during all the time that he remained in Missoula, having his headquarters at Hamilton, I think, a portion of the time, and the rest of the time at Missoula.

Q. Do you mean the Blackfoot Agency or the Flathead Agency?

A. I meant the Blackfoot Agency on the east side of the range, in the northern part of the State of Montana.

(Witness excused.)

WALTER M. BICKFORD.

Subscribed and sworn to before me this 14th of April, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

CLARENCE R. PRESCOTT, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Where do you reside? A. Missoula.

Q. How old are you? A. 39, going on 40.

(Testimony of Clarence R. Prescott.)

Q. What official position, if any, do you hold in that county? A. Sheriff of Missoula County.

Q. How long have you occupied that position?

A. Since the last general election.

Q. How long have you lived in that county?

A. I have lived there most of the time for 24 years; I have been out of the country.

Q. What has been your business?

A. Well, mining and ranching.

Q. Have you ever been connected with the administration of law in any other capacity than in your present capacity as sheriff of the county?

A. I was city marshal of Missoula 4 or 5 years.

Q. During what time?

A. Well, I think 1889, for four years.

Q. Do you know one Chauncey L. Griswold?

A. Yes, sir.

Q. How long have you known him?

A. Why, I don't know exactly; perhaps 4 years.

Q. Where did he live when you knew him?

A. Well, when I first heard of him he resided up the Blackfoot; in fact, when I first knew him; he is now a resident of Missoula.

Q. Do you know what his reputation is in the vicinity in which he lives for truth, honesty and integrity?

A. Why, I think I do.

Q. What is it, good or bad?

A. Well, it is not very good.

(Testimony of Clarence R. Prescott.)

Q. Do you know a gentleman residing in Missoula by the name of Mel Stairs? A. Yes, sir.

Q. How long have you known him?

A. Perhaps about 12 years, it may be longer or probably not as long.

Q. Where did he live while you have known him?

A. Why, he resided up the Blackfoot about 15 miles from Missoula, I should think, perhaps a little further, and kept a saloon on the Blackfoot river, a sort of station there.

Q. Where is he living now and what is he engaged in?

A. He is in Missoula in the saloon business, he and another are running the Headquarters saloon in Missoula.

Q. Do you remember how long he has been running the Headquarters saloon?

A. About three years or more, I should think.

Q. Does his place come under your surveillance officially during your occupancy of the office of sheriff or as marshal?

A. Why, I don't know, but of course we go in there occasionally in town where he is now.

Q. Do you know what his reputation for truth, honesty and integrity is in the vicinity in which he lives?

A. Yes, sir.

Q. What is it, good or bad? A. It is bad.

Cross-examination.

(By Mr. MAYNARD.)

Q. You say that you have known Mr. Griswold about four years?

(Testimony of Clarence R. Prescott.)

A. Yes; I think about that length of time.

Q. You had no acquaintance with him at all before that time?

A. No, not personally acquainted with him; I knew of him.

Q. How long have you lived continuously in Missoula?

A. Why, I have lived there continuously since 1888, I guess.

Q. How long has Mr. Griswold lived in Missoula?

A. In the town of Missoula?

Q. In the city of Missoula, yes?

A. Why, I should think probably about two or three years, maybe longer; I don't know just when he moved to town there, I was not personally acquainted with him until, as I stated, possibly, four years ago.

Q. Then you mean by that that you did not know him until he moved to Missoula?

A. Yes; that is, as I understood, he moved in to Missoula about that time.

Q. So whatever length of time, in fact, he has resided in Missoula is the length of your acquaintance with him?

A. Yes, sir; personal acquaintance with him.

Q. Do you know where he lives?

A. Why, at the present time, I think, he is living in a little store that he is running on the west side of town, on the west side of the Bitterroot track, on the north side of the Missoula river.

Q. He is engaged, as a matter of fact, in the retail grocery business, is he not?

(Testimony of Clarence R. Prescott.)

A. Yes, sir; at the present time.

Q. And has been for upwards of a year?

A. Something like a year, I guess, since he started there.

Q. And you say that your business is just now that of sheriff? A. Yes, sir.

Q. Have you ever had any call in your official work with Mr. Griswold? A. No, sir.

Q. At any time since you have been sheriff?

A. No, sir; not that I know of.

Q. Outside of this timber prosecution what do you know about his reputation for truth and veracity?

A. Mr. Griswold?

Q. Yes, outside of what you have heard?

A. I know nothing personally, only what I have heard in regard to Mr. Griswold; I never had any dealings with the man at all.

Q. And you have no personal knowledge of any kind in regard to him? A. No, nothing.

Q. And all that you know is simply what you have heard? A. What I have heard, sir.

Q. And that is since he has removed to Missoula to live? A. Yes; within a few years.

Q. Now, then, did you ever hear anything said against him previous to his commencing a civil suit against Cobban to recover for his work under a contract—

A. Why, I cannot say that I did or did not. I do not know how long since I heard him spoken of as being—well—crooked.

(Testimony of Clarence R. Prescott.)

Q. Well, that suit was commenced more than a year ago now. A. Well, I think perhaps, yes, sir.

Q. In the Missoula District Court?

A. Yes, sir.

Q. And it was about that time that you heard things against Mr. Griswold?

A. Yes, sir; or probably prior to that, prior to the commencement of the suit.

Q. You say probably prior to the commencement of the suit, that is, the suit against Cobban. Now, try and refresh your recollection, please, and tell me one definite accusation of any kind that you can locate previous to Mr. Griswold commencing the suit against Mr. Cobban.

A. Well, possibly I could not, you know. There was a great deal of talk generally about that time. This talk might have been before the commencement of the suit.

Q. And it might have been after?

A. Yes, sir; or it might have been after. Of course, you understand, I remember the time that the suit was begun. I did not serve those papers myself personally, but I remember it.

Q. And the adverse criticisms that you heard at that time were relative to his actions in and about these timber matters, was it not?

A. Oh, not altogether. Of course, you can hear a good deal if you listen and wait about different people at any time.

Q. Can you name any particular time when anything

(Testimony of Clarence R. Prescott.)

was said against Mr. Griswold by anybody except in connection with his conduct in this timber matter?

A. Why, I don't believe that I could specifically.

Q. Now, I will call your attention to your testimony which you gave in reply to my Brother Walsh's questions, that you said the general reputation of Mr. Stairs, the general reputation in the neighborhood in which he lives for truth, honesty and integrity is bad.

A. Yes, sir.

Q. You claim to have some definite knowledge in regard to Mr. Stairs' reputation?

A. Oh, well, not particularly definite; I could name maybe lots of things that are material. His reputation is very bad, Mr. Stairs' is; in fact, you could find better witnesses than I. Mr. Denny, who was formerly County Attorney of Missoula, is a resident of Butte and prosecuted him on several occasions. There are very few who would make good character witnesses for Mr. Stairs. Also Mr. A. J. Violette, who under Mr. Kern's administration was connected with the prosecution of Mr. Stairs. He knows about him. I never personally arrested Mr. Stairs myself.

Q. How long has Mr. Stairs resided in Missoula?

A. Possibly three years—longer or shorter, I could not say.

Q. Did you know him previous to his moving to Missoula? A. Yes, sir.

Q. Up in the Blackfoot country?

A. Well, I used to know him when he came to town. I

(Testimony of Clarence R. Prescott.)

never visited him at his home. I have passed by his house.

Q. And you say he has only been in Missoula three years?

A. Well, he lived formerly up on the Blackfoot, perhaps fourteen miles from Missoula and ran a saloon there, you know, for a number of years, and I guess he still runs that as well as the one in Missoula—at least he runs it part of the year.

Q. You say he runs a saloon in Missoula?

A. Yes, now.

Q. And has run a saloon up in the Blackfoot country about fourteen miles from Missoula? A. Yes, sir.

Q. Do you find your basis of criticism on the ground of his business?

A. Oh no, not necessarily—a man don't have to—

Q. During the three years that he has conducted a saloon in Missoula, take the last three years, the saloon that he is now running, has he been arrested at all?

A. No, not by the sheriff's office. I don't know whether he has been arrested by the police or not.

Q. You have personal knowledge of the fact that the sheriff's department has not issued a warrant or served a warrant? A. No; I never served any.

Q. And you have no personal knowledge of the police department having arrested him? A. No; I have not.

Q. So that, as far as you know, he has, in the conduct of his business, observed the law?

(Testimony of Clarence R. Prescott.)

A. I will answer, well, I will say this, that there has been numerous complaints.

Q. Answer my question, please.

A. Well, repeat it, please.

Q. (Question read.)

A. Well, I don't know as he has observed it; he has probably evaded it; that is the proper way to answer that question, I guess.

Q. I accept the amendment.

A. Yes; I will qualify it.

Q. You can insert the word "obey" in my question, Mr. Stenographer.

The STENOGRAPHER.—He said evade.

Mr. MAYNARD.—Well, let the question stand.

Q. Well, that is probably no more than the other men that are engaged in the business do?

A. Oh, there are some, perhaps.

Q. That are in the same class?

A. In the same class; yes, sir.

Q. Do you know of any that are not?

A. Why, I think so, yes; there are some down there that there is never any complaint of or any rumors of people being rolled or drugged in their places of business.

Q. Do you know anything about any such charge as that taking in place in Mr. Stairs' saloon when he himself was present or had any knowledge of what was going on?

A. Well, I couldn't say if he was present at the time; I know of one or two cases that came directly under my observation, that it was a toss up that they could not tell

(Testimony of Clarence R. Prescott.)

whether they got it there or another place that was right next to it; they drank in both places.

Q. What was that? Let me know about that.

A. Well, a man getting something in his drink and not being able to get very far after taking a couple of drinks, and losing his money.

Q. In some saloon in Missoula?

A. Yes, he took one drink in Stairs and one in a place called the Owl saloon and was picked up right between the saloons, had become unconscious and a doctor had to be gotten, and the man revived. The man's name is Dodd and I think perhaps he is one of those ranchers that are mixed up in this case.

Q. Is it Hiram Dodd or Harrison Dodd?

A. I don't know.

Q. We have had the whole family of them here?

A. Yes, there is quite a family of them, and he can be found, I guess.

Q. Can you identify the Dodd?

A. No, sir; I don't remember his name.

Q. It would be difficult to locate the Dodd?

A. Oh, no; if you want him I will get him for you. I don't know which one it is personally; there are five of them. I know him when I see him, but do not know his name.

Q. Whom have you ever heard anybody say anything against Mr. Stairs' word. Just name one now.

A. Well, I have never heard anybody that would take his word yet; I never heard a good word about the man,

(Testimony of Clarence R. Prescott.)

sir. Now, Stairs never did anything to me personally and I don't want to appear bitter in this matter against Mr. Stairs; I would rather you would get the information from somebody else or part of it at least.

Q. I want to know all you know about it. You came here and put yourself on record as swearing against one of your citizens?

A. Yes, sir, that is right.

Q. And now I have a right to know what your basis for that is.

A. Well, the basis is general talk, isn't it, where you ask a question of a man's reputation? It is what you hear; not what you know.

Q. Then you have no personal knowledge?

A. Stairs never did anything to me.

Q. He never broke his word to you?

A. No, you bet, he never had a chance.

Q. Do you know of anybody that he did break his word with?

A. Well, I could not say that I do, sir.

Q. In the absence of that knowledge are you able to name any particular man who has informed you in regard to Mr. Stairs' reputation?

A. Why, I don't know, but if you ask anybody they will tell you what I tell you; anybody that was acquainted with Mr. Stairs.

Q. That is now what I ask you?

A. Well, I would not name any particular man. You could get the same information from seventy-five

(Testimony of Clarence R. Prescott.)

per cent of the people in Missoula that know Mr. Stairs.

Q. But still, notwithstanding the large percentage, you are unable to name one man?

A. Yes, sir; at least I won't name any. I could name some.

Q. Have you ever during your knowledge or acquaintance with him known of his being arrested for anything?

A. Why, I have heard of his being arrested?

Q. You have heard of his being arrested?

A. Yes, sir.

Q. What for? A. I don't recollect now.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Prescott, you were asked about some individual instances in which there were rumors and reports current of wrongdoing at the Headquarters saloon. Do you remember the case of old man Maley, who happened to drop into the river back of the saloon?

A. Yes, sir; I recollect that.

Q. What was his name? A. John Maley.

Q. What was the fact about that?

A. Well, as far as I know, I guess the man fell in—I don't know—I don't believe anybody else knows how the man got in the river. The man was found drowned in the river. I am not accusing Mr. Strairs, understand, or anybody else in the matter.

Q. Well, I was simply asking about rumors or reports that were current.

(Testimony of Clarence R. Prescott.)

Mr. MAYNARD.—I object to that as not proper redirect examination as to mere rumors, as entirely incompetent.

Q. Now, Mr. Prescott, where were you living during the summer of the year 1899? A. At Missoula.

Q. What business were you engaged in then?

A. I was assessor of Missoula County?

Q. Where was your office?

A. In the courthouse.

Q. In Missoula? A. Yes, sir.

Q. Were you about on the streets of Missoula considerable during that year A. Why, yes.

Q. And did the duties of your office require you to travel about the county to some extent?

A. Yes, I traveled all over the county during my two years of office.

Q. I wish you would state what the fact is as to its being currently rumored and understood about the streets of Missoula during the summer of 1899 or at any time during the year 1899, that there were a large number of persons taking up timber claims illegally with a view to transferring them, after making final proof, to R. M. Cobban?

A. Why, I don't remember having heard that. I know there were a great many taken up. I did not know that they were, and never remembering hearing that they were being taken up illegally.

Q. What have you to say as to its being generally and commonly understood that that condition of affairs existed in Missoula at that time.

(Testimony of Clarence R. Prescott.)

A. Well, I can only speak for myself; I had not heard it.

Q. You never heard of such a thing?

A. I never even got a timber claim myself.

Recross-examination.

(By Mr. MAYNARD.)

Q. Your answer is—I know that in the spring and summer of 1899 there were a great many timber claims taken up? A. Yes, I know there were, yes sir.

Q. When did that, as some of the witnesses have called it, stampede commence?

A. Why I could not say exactly.

Q. I do not ask you to say exactly, but what is your best recollection?

A. Well, I cannot tell; it was probably in 1899. Anyone reading the papers, you know, would see the reports from the land office, and gain a knowledge of the number of entries from the amount of money the receiver turned over.

Q. How long did it last?

A. Why, I think it continued for quite a long time, probably a year. I never got the fever.

Q. You never got the fever?

A. No, sir; I did not get any timber land.

Q. Are you able to state why you were able to resist the temptation or the fever which seems to be so prevalent there? A. I think so.

Q. What was the reason?

(Testimony of Clarence R. Prescott.)

A. Well, I didn't have four hundred dollars to pay for it with; I believe that was the purchase price.

Q. That was quite an antidote, was it not?

A. You bet you; it is all right.

Q. It would require more than that, wouldn't it, to meet the purchase; that would just pay for the land?

A. It wouldn't take very much more, I don't believe; there would probably be some fees to the land office besides.

Q. There would be at least eleven dollars to the land office?

A. Possibly, yes, sir; if it was a full quarter.

Q. And then there would be the fees for publishing the advertisement in the paper, wouldn't there?

A. I guess so.

Q. And then there would be the expense of going to the land to look at it?

A. Well, that wouldn't be much of an item, I don't think; cayuses are cheap down there; it wouldn't be much of an item.

Q. I think it is developed here that it ran from four hundred and twenty-five to five hundred dollars.

A. Well, it would be all the harder to get then, wouldn't it.

Q. Now, Sheriff, of the great many claims that you say you know were taken up, did you know any of the entrymen or entrywomen.

A. Why, yes, I know some of those people that I

(Testimony of Clarence R. Prescott.)

heard the names called off to-day when Mr. Bickford was on the stand.

Q. Can you recall some of their names now?

A. Why, the Dodd family and the Dildines.

Q. You say you have lived in Missoula how long?

A. Why I came there to Missoula County in 1878 and I have lived there most of the time, with the exception of 3 years, in Missoula County all of the time.

Q. Did you ever hear of a man by the name of Charles Cloutier of Clearwater?

A. I have heard the name, yes, sir.

Q. Do you know him?

A. I don't know him, no, sir, not by that name.

Q. Any acquaintance with him at all?

A. No, sir, I don't know him by name.

Q. I will refresh your memory by calling the names of some of your fellow citizens down there. Here is Mr. Thomas Pelkey. Do you know him?

A. Yes, that is, I know a Thomas Pelkey.

Q. Of Missoula? A. Yes, sir.

Q. What do you say about whether you have any knowledge of his having any real or personal property?

A. Why I don't know whether he has or not. I think he has an interest in the Pelkey estate there; there is quite a number of Pelkey boys there, some of them were raised there and some of them came from Walla Walla. They are all relations. I never paid much attention to them but I know the boys when I see them.

(Testimony of Clarence R. Prescott.)

Q. Do you know this Thomas Pelkey?

A. Yes, I think I know him. There is Tom and Bob and Jeff—there is two Jeffs.

Q. What does he do now for a living?

A. I could not say now just what he is doing. I think the last time I saw him at work, I think he was working for Judge Knowles. I think it was Tom that was working for him, mowing a lawn over there last summer or the summer before.

Q. How old a man is he?

A. Oh, he is a man younger than I—perhaps 35, perhaps not that old. I would probably have a hard time to study out their ages; there are two families there.

Q. And you think he was mowing a lawn and doing general man work?

A. If it is the man I think it is; that is, there are so many Pelkeys there, six or seven, and part of them belong in Walla Walla. And they pretty near look alike. It is kind of hard to distinguish some of them; they are all pretty dark, the boys.

Q. If this is the Thomas Pelkey really that you have in mind, he was doing work around the yard at Judge Knowles?

A. Well, to tell you the truth now—I will try and explain it to you—there is a family of Pelkeys there and they have a little estate left there and there was a portion of them—

Q. What do you mean by that?

A. Well, I mean that it is 40 acres or fractions left

(Testimony of Clarence R. Prescott.)

of it, and the balance of it is sold to the town, and it was left for the younger children.

Q. Forty acres? A. Yes, sir.

Q. Whereabouts?

A. Well, you wait till I get through, and then I will tell you where it situated.

Q. All right; I beg your pardon.

A. The younger children—the older ones got their portion in lots, different pieces out of this estate. The older daughter, I think, was married to E. A. Kinney; I think he is a resident of Anaconda now. The younger children, when I was assessor I assessed the fractional part of this estate for them to the estate for Bob Pelkey, I think it was E. A. Pelkey and Augusta Pelkey was the woman, and there is three, I think, that own in this property. Now, whether Tom is one of the ones that own in this property I am not prepared to say, that is, as to being one of the younger children, if he belonged to that family. That is the old family that remained here. Now, the other boys that came from Walla Walla, several of them, that was a different family; in fact there was brothers and half brothers and everything else; there was a regular mix-up.

Q. If in this mix-up it is in truth and in fact the Thomas Pelkey—

A. There is not any Pelkeys down there that I don't know, but I might have a hard time to pick out Tom from Dick; that is, to call them right by all their names. I want to be fair about the matter.

(Testimony of Clarence R. Prescott.)

Q. Then this Thomas Pelkey may have an interest in this Pelkey property? A. Yes, he may have.

Q. And if he has not got an interest do you know of any property of any kind that he has now or had at the time that you were assessor in the year 1899?

A. He may have acquired some since I was assessor.

Q. Did you know of it?

A. I don't know of any, no, sir.

Q. So that it would be confined to whatever interest he might have had in the Pelkey estate?

A. As I recollect it, yes, sir.

Q. And how many heirs there were you don't know?

A. Well, I think it belonged to the three younger ones. I am not certain. The property, however, is valuable; it is right there, situated on the edge of Missoula, this property that I speak of. Whether Tom owns an interest in it or not I don't know.

Q. You say it was valuable—how much was it worth?

Mr. BICKFORD.—Objected to as not proper cross-examination and as irrelevant and immaterial.

A. I couldn't say just what it was worth. It is right adjacent to the town, in fact you might say it is right in town. The property lies right on the Rattlesnake what is the name of that addition—the Park Addition. It is between town and the Park Addition.

Q. How many acres would you say it was?

A. I could not say.

Q. Do you know how much you assessed it at?

(Testimony of Clarence R. Prescott.)

A. No, I don't now.

Q. Have you any personal knowledge on the subject; what is your personal judgment as to the value?

A. Well, the property is worth probably $200 an acre, maybe more; it all depends on who wants it, you know.

Q. And how many acres there are, you don't know?

A. I do not, no, sir.

Q. Now, here is Mr. B. Frank Chattin of Missoula.

Mr. WALSH.—I don't see how this is cross-examination. To what matter of our examination do you claim that this goes?

Mr. MAYNARD.—It has been brought out here—you brought out on your own examination that during the summer of 1899 while there were a great many entries taken up under the Stone and Timber Act to the knowledge of this witness, he had no knowledge of the fact that these entries were being made fraudulently and by reason of a corrupt agreement with Mr. Cobban. That was your question.

Mr. WALSH.—Yes, sir, and what was his answer?

Mr. MAYNARD.—His answer was, he said "I don't know it, but I do know a great many were taken up." Now, then, I think that it is entirely legitimate and competent for me on cross-examination to find out just exactly what the conditions were within the knowledge of the witness as to how these claims were taken up which he says he knows about.

(Testimony of Clarence R. Prescott.)

Mr. WALSH.—You have not asked him about any claims.

Mr. MAYNARD.—And his conclusion is he says he didn't know about it. Now, I propose to show—

Mr. WALSH.—What he said about it was that he had no knowledge and had no information that they were being taken up fraudulently.

Mr. MAYNARD.—I know that. Now, then, I propose to search into the knowledge of this witness.

Mr. WALSH.—All I asked him about was as to the currency in that neighborhood of a report or rumor that these claims were being taken fraudulently; he answered that by saying that he had not heard of any such thing.

Mr. MAYNARD.—Very well; what I propose to show is this—he said that he knew there were a great many entries taken up. Now, he has been assessor in the county during that very summer, and I want to find out from him and search into his knowledge as to each of these entrymen, in order to let the Courts determine as to whether or not these entries were made fraudulently by reason of a corrupt agreement with Mr. Cobban. He says himself—

Mr. WALSH.—We shall object to your making this man your witness for the purpose of proving by him the lack of financial ability on the part of these entrymen, a matter which you went into in your examination in chief, so that it may be well understood.

(Testimony of Clarence R. Prescott.)

Mr. MAYNARD.—You opened the door, and I propose to go in.

Mr. WALSH.—I did not open the door at all; I did not ask him anything at all about what he knew about any of these entrymen. You put in some testimony here which was to the effect that there was a rumor current in Missoula that these entries were being made fraudulently, and I asked this man if he had heard it, and he said no.

Mr. MAYNARD.—You can take any course that you want. I say as a lawyer that it is simply elemental, that you, having opened the door, it is competent for me to enter in. If you want to object well and good; if you want go further well and good. I will exhaust this subject now and stay with this assessor until I get through. If you want to appeal to all the Courts on such an elemental matter as that, it is open to you.

Mr. WALSH.—You cannot make this witness yours.

Mr. MAYNARD.—Well, I will or I will know the reason why.

Mr. WALSH.—Any subject that we examined on is competent for you to cross-examine on.

The EXAMINER.—Well, I think the objections have been fully stated. Of course, the Examiner cannot control this matter at all.

Mr. MAYNARD.—Such a proposition as that I will stay by.

(Testimony of Clarence R. Prescott.)

Q. I want to know in regard to your knowledge of Mr. B. Frank Chattin?

Mr. WALSH—Objected to as not proper cross-examination and not cross-examination of any matter brought out on the redirect examination, the witness having testified simply that he knew some entries were made and that he had no knowledge or information that any of these entries were made fraudulently, and his knowledge of B. Frank Chattin is a matter entirely irrelevant and immaterial and particularly inasmuch as he has not testified that he ever knew that B. Frank Chattin made an entry.

Q. Now, Mr. Sheriff, assuming that, during the summer of 1899, while you were a resident of Missoula and holding the official position of assessor, and knowing B. Frank Chattin as you did, have you now any knowledge as to his possessing any estate at that time, either real or personal, by which he could pay the sum of between $400 and $500 to perfect his entry under the Stone and Timber Act?

Mr. BICKFORD.—The same objection, and also that the witness has stated that he knew Chattin or his financial standing or his ability to raise the amount of money mentioned by counsel, and for the further reason that it is not cross-examination.

A. I know three Chattins down there, but I don't know which is B. F. Chattin. There was such a name on the assessment-book, I remember that.

(Testimony of Clarence R. Prescott.)

Q. Can you swear that B. Frank Chattin's name was on your assessment-roll?

Mr. WALSH.—Objected to because the assessment-roll is the only evidence.

Q. Have you any personal knowledge of yourself?

Mr WALSH.—The same objection.

Mr. BICKFORD.—And also because the question has already been answered.

Q. Answer the question, please.

A. I don't know whether B. F. Chattin is B. Frank Chattin.

Q. I am referring to this entryman here, if you know him, of B. Frank Chattin, if you have any knowledge about him?

A. Well, B. Frank Chattin, I can say that I don't know him, to tell the truth of it.

Q. Do you know these Muchmores?

Mr. WALSH.—The same objection as to the last question.

Q. Albert F. or Guy W. or Oliver E. Muchmore of Ovando?

A. I don't know them, no, sir.

Q. Now, here is John B. Catlin of Missoula?

A. I know him, yes, sir.

Q. Do you know in whose employ he was during the summer of 1899?

Mr. WALSH.—We urge the same objection to all of

(Testimony of Clarence R. Prescott.)

these questions, asking what he knows about particular entrymen mentioned in the bill of complaint.

A. I do not know who he was employed by, sir.

Q. Do you know in whose office he was working?

A. Why, I don't know whether Mr. Catlin was in Cobban & Dinsmore's office in 1899 or not. He is at the present time around the building there; he is around their office building there at present or has an office in their building?

Q. He has now?

A. Yes, but I don't know whether he was in 1899 or not or whether he was in Hamilton yet.

Q. Don't you know as a matter of fact from the time that he removed from Hamilton to Missoula that at that time he entered into the service of Cobban & Dinsmore? A. I do not know it, no, sir.

Mr. BICKFORD.—Objected to as not proper cross-examination, nothing having been brought out in the examination in chief concerning occupation or employment of John B. Catlin.

Q. You don't know that?

A. I told you I did not know, and I don't know if he is employed by them now or not.

Q. Do you know of the fact of his having worked for Mr. Cobban at any time during these years?

A. I do not know a thing about it.

Q. But you have seen him around the office there?

A. I have seen him around the office there, yes, sir.

(Testimony of Clarence R. Prescott.)

Q. Whether he was working for them or not you don't know of your own knowledge?

A. I don't know; he might own that business for all I know.

Q. Did Mr. Catlin's name appear on your assessment-roll?

Mr. WALSH.—Objected to because the roll is the best and only evidence, and also the same objection as that made to the other question.

A. I don't recollect, but I think so.

Q. But you have no personal recollection?

A. No, sir.

Q. What basis have you for thinking so?

A. Well, I think that everyone was pretty well found in that county; even if a man only owned some little personal property, there was no exemption that year, and they found pretty well all. Of course, I didn't assess all of them; you must understand that I had two deputies besides.

Q. But you have no present recollection of anything yourself assessed in the line of real or personal property to Mr. Catlin? A. No, sir.

Q. And aside from the fact that you tried to get everybody on for some little personal item of property, you have no knowledge? A. No.

Q. Have you any knowledge now or did you have any knowledge in 1899 of John Catlin's having any real or personal property out of which he could legitimately pay for this entry and if you do, name it.

(Testimony of Clarence R. Prescott.)

A. Well, no, I have not.

Q. Is the same answer true of his wife, Lizzie T. Cat lin?

A. Well, I should think it would be, yes.

Q. Do you know Belle Bryan Gilles, formerly Bryan?

A. No, sir.

Q. Do you know these Bryans?

A. I know William J. Bryan, yes, sir.

Q. Well, we are all acquainted with him.

A Well, probably you are not acquainted with this particular one that I am; there is a man down on the Blackfoot.

The EXAMINER.—It is Thomas B. Bryan.

The WITNESS.—Well, there is another man down there, too; may be I don't know Thomas Bryan.

Q. You don't know whether you know him or not?

A. I am not sure; they always call him William J. Bryan; may be it is a burlesque.

Q. I think he has some of Mr. Bryan's oratorical ability?

A. He runs the stage line, if he is the same man I know.

Q. He is a carpenter and has worked for the Northern Pacific road; he lives in Missoula at the present time.

A. Well, there is a Bryan there, and I think his name is on the assessment list; he lives in town; that is a different Bryan from the one I had in mind.

(Testimony of Clarence R. Prescott.)

Q. Have you any personal knowledge as to what property is on the assessment roll, if as a matter of fact his name does appear there at all?

A. No, I haven't.

Q. Now, here is Mr. Leonard Barrett. Do you know him as the old soldier?

A. I don't believe I know Mr. Barrett; I know a Barrett, an old miner.

Q. Don't you know Leonard Barrett of Missoula?

A. I don't know what this Barrett's name is.

Mr. BICKFORD.—That is Louis Barrett, the discoverer of the Nine Mile.

A. Well, that is the one I know.

Q. This man, as I recall his features and occupation, etc., he said that he lived in Missoula for some time.

A. No, I don't think I do.

Q. So you have no knowledge as to whether his name appears on the assessment-roll or not?

A. No, sir. Ther are lots of people down there that I don't know.

Q. Do you know Edgar Lehman of Clearwater?

A. No.

Q. Or Lelia T. Bryan of Clearwater? A. No.

Q. Now, here is another one of your fellow-citizens, Charles H. Moss, do you know him? A. Yes, sir.

Q. An unfortunately crippled peddler. You know that he is a peddler, don't you?

A. Charles Moss?

Q. With a stiff arm, deformed.

(Testimony of Clarence R. Prescott.)

A. Well, I know him, yes. I did not know his name was Moss. I know the man well that you have reference to; there is only one there that answers that description; I supposed he had a different name.

Q. Well, that is Mr. Charles H. Moss.

A. Well, I have always understood that his name was Demars, that man that is crippled.

Q. Do you know of that man having any real or personal property by which he had a dollar with which to acquire honestly a claim under the Stone and Timber Act?

A. He might have money for all I know.

Q. Do you know of his having money?

A. I don't know anything about it, sir.

Q. Are you able to state whether you assessed him at all for any real or personal property?

A. Why his name is on the assessment-roll there; you will find it there.

Q. For what?

A. I don't know; perhaps a little home or some personal property or something of that kind.

Q. Do you mean that according to the laws of your state, that if a man has any kind of personal property his name appears on the assessment-roll?

A. There are no exemptions in this country, sir. Of course, if a man only had a few dollars worth, he was not assessed.

Q. But if he had a single horse or cow his name would appear on the assessment-roll?

(Testimony of Clarence R. Prescott.)

A. Why, unless he was missed purely; if he had fifty dollars worth he would appear on the assessment-roll.

Q. Have you any knowledge of this man, Moss, having any real or personal estate?

A. I have not, sir; I do not know if he owns a dog.

Q. Now, it is not far away—these Dodds have lived up at Bonner, a little delightful drive from Missoula, Edward Dodd, and Cora Dodd—do you know these Dodds?

A. Why, I know them all, I think, but I could not tell one from the other; I have met all of them.

Q. Do you know of one of them that owns one particle of real estate in Missoula County?

A. Why, they have got a little home up there, I don't know as they own it; I don't believe they have got title to it.

Q. Do you know of any of them having a bit of personal property?

A. Yes, sir, I assessed one of two Dodds up there; one had a team and a little plow and wagon and harness.

Q. He was the more fortunate one of the family perhaps?

A. Well, I could not say as to that, sir; then the old man had a little home up there.

Q. Did you know this woman, Katie Watson, of Bonner? A. No, sir, I did not.

Q. And here is Doc E. Watson. Do you know him or ever hear of him?

(Testimony of Clarence R. Prescott.)

A. I know several Watsons; I don't know anyone by the name of Doc.

Q. Up in the Clearwater country?

A. No, I don't know anybody up in that country; that is, no Watson up in there.

Q. You have no knowledge about them at all?

A. No, I don't know them.

Q. Here is Mr. Charles B. Sperry and Thomas H. McConnell of Clearwater. Do you know either of those names? A. No, sir.

Q. You have referred to the Dodds, Hiram, Harrison, and Matilda and Lizzie Dodd. Here is Vital Cyr, and his cousin or brother in law or whatever it is Levi B. Cyr. Do you know these Cyrs?

A. Yes, sir; I know both of them.

Q. What have you to say as to them, whether in 1899, they had any estate in the county to your knowledge.

A. I think both of them have. Levi did you say?

Q. Vital and Levi?

A. Well, there is two Cyrs, one is Levi and one is Levity.

Q. Do you now refer to Levity?

Mr. BICKFORD.—That man spells Levite.

A. Well, there is a son of Bill Cyr lives in Grass Valley, and he has left the country, and when he left I don't know, and Levite Cyr is this fellow that got touched down here a few months ago. He has had a little ranch and has had for some time. The one that is called

(Testimony of Clarence R. Prescott.)

Levity now lives in Kalispell, that is Bill Cyr's son of Grass Valley.

Q. What estate did he have in 1899 to your knowledge of any kind?

A. I don't remember; he worked at a sawmill over at Truro, not George Shoup's, but the man who was the predecessor of Niles in the ownership of this mill that cut for your people there at Clinton. He had a team and hauled lumber on contract for him. I don't know that he owned any property, but I know that he was on the assessment roll; he was lame in one leg.

Q. That is Levi, is it?

A. That is Levi; yes.

Q. Do you know is that his brother in law or what, Vital?

Mr. WALSH.—Vital, is that the one in Kalispell?

Q. Do you know Vital, his brother in law, a Frenchman that swore he cannot read the English language, that has little or no education of any kind?

A. Yes, sir; I have seen him.

Q. Do you know of his having any property?

A. I think his name is on the assessment-roll; I am not certain; I think it is. I remember the name perfectly well.

Q. Would it be anything more than some little personal property?

A. Why, I could not say, sir; I could not say.

Q. You have no knowledge of his having any real property?

(Testimony of Clarence R. Prescott.)

A. There is about 30 or 40 Cyrs down there, and it is pretty hard to round them all up.

Q. You have no knowledge now of your own recollection?

A. No, sir; not a bit; he might not own anything there at the present time.

Q. Here is a woman by the name of Nellie J. Ehle. Do you know her?

A. No, I have heard the name; no, I don't know her. I have heard the name of Ehle, and am very familiar with it; but I do not know Nellie J.

Q. If you don't know her, have you any knowledge of any kind as to her owning any property in the county? A. I have not, sir.

Q. Do you know these Jemisons that live up in the Clearwater country?

A. Why, I know one or two of the boys.

Q. Which ones; Jacob F. and Albert?

A. I don't know which; I was introduced to them by Mrs. Dildine; they are her brothers.

Q. Aside from having the pleasure of being introduced to them by Mrs. Emma Dildine, have you any knowledge of their financial condition?

A. I am not acquainted with them at all, sir; I only met them once.

Q. Don't know anything about them?

A. No.

Q. Now, is here George and Emma Dildine. George is quite a substantial citizen, isn't he? A. Yes.

(Testimony of Clarence R. Prescott.)

Q. Of Missoula? A. Yes.

Q. He has some property? A. He has.

Q. And you have some knowledge of his owning some real and personal property in town? A. Yes.

Q. But you have no knowledge of his wife, Emma, having any property other than being the wife of George? A. No, sir.

Q. Do you know these people that live up, neighbors of yours up in Victor, the Eddys, Matilda Eddy and Thomas Roll and Abraham J. Jemison?

A. I think I know that Jemison up there.

Q. Do you know of his having any property of any kind?

A. Does he live on Sweat House Creek?

Q. I am not familiar with the creek; I do not know.

A. If he does, he owns a good ranch. I knew a Jemison up there that has got a fine ranch; a good substantial citizen. I don't know whether he is the one you refer to or not. I knew him years ago; I used to live there myself.

Q. But whether that is Abraham J. Jemison, you don't know?

A. No, sir; I don't know which Jemison it is.

Q. I think you can rely upon it that it is not the Jemison that you know? A. Well, I don't know.

Q. Here is James W. Wheaton, a carpenter down there? A. Yes, sir.

Q. Do you know of his ever having any property of any kind? A. No, sir.

(Testimony of Clarence R. Prescott.)

Q. From your knowledge of Mr. Wheaton, who is in the habit of drinking freely—is he not?

A. Why, I guess so.

Q. From your knowledge of Mr. Wheaton, and you knowing that he did not have a dollar of any kind, how would you think he could take up and pay for 160 acres of Government land?

Mr. WALSH.—We object to this, because the witness has not yet said that he could; he has not said that he knew that he did; he has not said that he heard that he did; he has not said that he knew anything at all about his ever having taken up the land; therefore, it is impossible for him to answer the question as to why or how he thought he took up that claim honestly.

Q. Assuming that he did take up 160 acres of land under this Stone and Timber Act in 1899, how would you say, knowing him as you do, and knowing his financial condition, that he could take that up without some kind of bargain by which he was to get this money illegally?

Mr. WALSH.—We object to the question addressed to the witness because it calls for no fact, and merely asks the witness to speculate on the condition of affairs, and in addition to that, as a matter of course, the same objection that was made to the question some time ago and to all of these questions is urged to this question.

A. Why, I don't know how, or anything about Mr.

(Testimony of Clarence R. Prescott.)

Wheaton's financial condition. I knew him 12 years ago, when I worked in the mines, and I met him when I was assessor down at Plains, and I saw him a short time ago. I don't suppose I have seen the man three times in 10 or 12 years. Now, he might, of course, go out and work; he is a carpenter, and carpenters receive good pay; he could pay that money in one season if he would. I don't say that he would; I don't say anything about it.

Q. You know, as a matter of fact, that you saw him during this assessment season? A. Yes, sir.

Q. Did you meet him as assessor?

A. No, not officially; I didn't assess him. I met him in my travels around the country, and I think it was at Plains.

Q. Do you know of either you assessing him or your deputies? A. No, I don't.

Q. And to the best of your knowledge, his name does not appear on the assessment-roll?

A. I think not, sir.

Q. Here is Mary Eddy of Victor and Herbert Eddy of Victor. Do you know them?

A. No; they are out of our county.

Q. They are only a little way out of your county?

A. Well, but I would not see them officially as assessor.

Q. Have you met them anyway, personally or in business?

A. No, sir; I have not been at Victor for some years.

(Testimony of Clarence R. Prescott.)

Q. Daisy Chattin, wife of B. Frank Chattin? Do you know about her? A. No, sir.

Q. You know nothing about her?

A. I have met a Mrs. Chattin, but, as I said before, I do not know which Chattin; I know three Chattins.

Q. As to whether Mrs. B. Frank Chattin, who is Mrs. Daisy Chattin, has any property, you don't know anything about that? A. No, sir; I do not.

Q. Do you know John L. Deering of Missoula?

A. No.

Q. Did you ever hear of him? A. Yes.

Q. What did you hear about him; who is he?

A. Oh, nothing.

Mr. BICKFORD.—Objected to, not proper cross-examination.

A. I have simply heard the name; I never heard anything to direct my attention at all, but I knew a Thomas Deering quite well, so it was very easy to remember.

Q. But you have no personal acquaintance with John L. Deering?

A. No, not by name; I might know him and not know him by name.

Q. Do you know what his occupation or business is, or anything about him? A. I do not, sir.

Q. Now, then, how about John Saleen, of Missoula; who is he?

A. Well, there is a Saleen on the assessment-roll; I don't know him myself.

(Testimony of Clarence R. Prescott.)

Q. You don't know whether it is John Saleen that is on the assessment-roll?

A. I do not; I think it is spelled Saline, though.

Q. But I am asking you now particularly in regard to this entryman, John Saleen?

A. I have answered that I did not know him.

Q. You have no knowledge of him?

A. No, sir.

Q. Here is Charles C. Snider of Missoula. Do you know anything about him?

A. I know a Charley Snider; I don't know whether he is a resident of Missoula or not; I think he is a resident of Hamilton, the Snider that I know.

Q. Well, I mean this Snider; that young fellow that went off and joined the regular army.

Mr. BICKFORD.—I object to the statement of counsel as not being within the testimony of the case, there being no testimony whatever that Charles Snider is a young fellow, or that he ever joined the army.

Mr. MAYNARD.—I think that the objection of my brother is good, and cheerfully and gladly make that admission on the record.

Mr. WALSH.—It is not any better than all of them.

Mr. MAYNARD.—Because I am using my own personal knowledge which I have acquired from the officer who has been trying to find this man, Snider, and the Deputy United States Marshal told me that he was a young fellow around there, and that the last he heard

(Testimony of Clarence R. Prescott.)

of him was that he was at San Francisco and had enlisted in the army.

Mr. BICKFORD.—And as usual, you are mixing up your own personal knowledge with rumors that you have heard from somebody that told you about it.

Mr. MAYNARD.—Well, I have named the source of my information.

Q. Do you know any such person as this Snider?

A. Well, I don't remember. I knew a Charley Snider; I don't know whether he is young or not; he might be 32 or so, something like that.

Q. Did you hear of him going off to join the army?

A. I did not hear anything about him for several years.

Q. You don't know where he is? A. No, sir.

Q. Do you know Matthew P. Dunham of Clearwater?

A. No, sir.

Q. A guide and trapper? A. No, sir.

Q. Who boasts that his home is where his hat is; do you know this gentleman?

A. I know lots of people that are as well off as that, that their home is where their hat is; I don't know Mr. Dunham, though; I never had the pleasure of his acquaintance.

Q. Now, here is Frank B. Arey of Missoula. Do you know him? A. No, sir.

Q. Did you ever hear of him? A. I think so.

Q. What do you know about him at all?

(Testimony of Clarence R. Prescott.)

A. I know nothing, sir.

Q. Do you know of his owning any estate, real or personal?

A. I do not, no, not of my own knowledge.

Q. Do you know Dan McGillis of Clearwater?

A. I have heard the name quite often; I am not acquainted with him.

Q. Do you know Dan? A. No.

Q. Don't know anything about him? A. No.

Q. Do you know Effie M. Kilburn of Potomac?

A. No, sir.

Q. Do you know these Mickels, Arnold Mickels of Woodworth, Clara Belle Mickels?

A. Not personally.

Q. What do you know about them?

A. I don't know them personally.

Q. Have you any acquaintance by reputation of any kind?

A. No, I am not acquainted with them at all.

Q. William J. Eddy of Victor and Lavinia I. Gilman, and Lizzie M. Jemison and James Mize?

A. I know a Jemison there at Victor; I don't know who it is.

Q. Do you know a Laura Roll at Victor?

A. No, I know a Tom Roll up there and knew him a long time ago.

Q. Do you know Calvin Yarger and his wife, Mrs. Calvin Yarger of Victor? A. Yagger?

Q. Yarger of Victor. A. I think so.

(Testimony of Clarence R. Prescott.)

Q. Do you know them? A. I think I do.

Q. Do you know of his having any property of any kind? A. Why, no, I don't.

Q. Do you know John G. Hendrix of Victor?

A. No, sir.

Q. Do you know Martha E. Wright, the dressmaker or milliner at Stevensville?

A. No, sir, not personally.

Q. Any other way?

A. Why, I have heard of Mrs. Wright, a dressmaker at Stevensville.

Q. You have no knowledge of her having any real or personal property?

A. No, I don't know anything about her; they don't live in our county.

Q. Do you know Oscar Muckenhirn and Stephen Tepper of Clearwater? A. No, sir.

Q. Here is a well-known citizen of Missoula, John B. Reeve; do you know him? A. Yes, sir.

Q. Do you know of his having any real or personal property of any kind?

A. Why I knew of him having some personal property, yes, sir.

Q. Besides a few of these "cayuses" that you talk about; anything else that he had?

A. Why, not that I know; he has got a wagon and a team and cooking utensils, I suppose; a team and wagon.

(Testimony of Clarence R. Prescott.)

Q. Aside from that did you ever know of his having any real or personal property?

A. I don't know of his having any real property, sir.

Q. Here is his son in law, Robert Starkey. Do you know him? A. Yes, I have met Mr. Starkey.

Q. Do you know of his having any real or personal property aside from the few little things that he might have to work with?

A. Why, he had a little bunch of horses, probably a dozen or fifteen, I think, that I assessed.

Q. How much were the "cayuses" assessed at at that time?

Mr. BICKFORD.—Objected to because it is not a fair criterion of the value of property at 1899 or at the present time.

Mr. MAYNARD.—It was the time he was assessor, and that was the time the entries were made.

A. Well, I don't remember now; they were assessed for a very low price.

Q. Five dollars a head?

A. Oh, no, more than that; they were ten dollars at least. I didn't assess anything at less than ten dollars.

Q. It was against the law or against your principles, was it?

A. Against my principles, but not against the law.

Q. Here is Eliza A. Reeve, the companion of Mr. John B. Reeve, his wife; do you know anything about her having any real or personal property?

(Testimony of Clarence R. Prescott.)

A. I don't. Old man Reeve was a wood hauler, hauled wood to town and contracted to dig cellars and things like that.

Q. Do you know Mr. Reeve's general reputation, while we are passing, in the neighborhood in which he lived, for truth and veracity?

A. Why, I never heard much about the old man, except when he was in town digging a cellar. I never had much acquaintance with him, or never heard much about the old man, except the time that he was in town. He was digging a cellar, excavating for a block there which was built for Mr. Tietjens.

Q. Did you form his acquaintance then?

A. Oh, I had formed it sooner; I used to see him right along around town; I knew him before.

Q. So you cannot state his reputation for truth and veracity in the neighborhood?

A. I never heard much about him.

Q. Did you ever hear anything good said about him?

Mr. BICKFORD.—Objected to not proper cross-examination.

Mr. MAYNARD.—I think that is right.

Q. Here is Jack Murtaugh of Bonner, do you know him?

A. No, I never had the pleasure of Jack's acquaintance.

Q. You have heard of him?

A. I have heard the name, I think.

(Testimony of Clarence R. Prescott.)

Q. Do you know anything about him at all?

A. No, sir.

Q. Haven't you seen Jack?

A. Why possibly; I have probably seen most everybody, but I could not remember them by name. I wonder if you think that a man that runs for office don't see everybody.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Prescott, you were asked about Mr. Reeve. Did you ever hear anybody say anything to the discredit of old man Reeve in Missoula?

A. Why, no, I did not.

Q. When you saw Mr. Wheaton at Plains, do you know whether he was residing in Missoula County or not?

A. He was then in Missoula County at Plains.

Q. Do you know whether he was residing in Missoula County at that time or not?

A. I think he was employed at a mill.

Q. You were asked particularly about a man by the name of Moss; he is a man that lives up the Rattlesnake with his father and mother up there?

A. Yes, sir.

Q. Do you know about a little place he has up there?

A. Why, yes, in a general sort of way.

Q. Now, Mr. Prescott, you told us that you saw Mr. Catlin at Cobban & Dinsmore's office to some extent at this time? A. Yes, sir.

(Testimony of Clarence R. Prescott.)

Q. Cobban & Dinsmore are not in business together now, are they? A. I understood not.

Q. Where is the place that you speak of that you now see Mr. Catlin occasionally?

A. In the Higgins Bank Block.

Q. You know as a matter of fact that Mr. Cobban's office is some distance down the street past a railroad track, is it not? A. Yes, sir.

Q. Mr. Prescott, you have lived in Missoula County since 1878, you say?

A. Yes, sir, most of the time.

Q. You have heard about people in that county proving up on land that they took in one way or the other from the Government, have you not?

A. Yes, sir.

Q. Those people who go out on the border and settle upon a piece of public land, do not ordinarily have a great quantity of this world's goods, do they?

A. No, sir, they don't have very much in money usually.

Q. Those people who are well to do and well supplied with property ordinarily do not take up wild land, do they?

A. They do not go away out.

Q. Now, also, Mr. Prescott, have you ever heard of people who settle upon a piece of public land and de- to make final proof on it, not having the money going and borrowing it of parties to make that proof?

A. Yes, sir.

(Testimony of Clarence R. Prescott.)

Q. You have heard of that frequently, have you not?

A. Yes, sir.

Q. Now, your credit, I suppose, was pretty good at that time, at least for four or five hundred dollars?

A. Yes, sir.

Q. If you had wanted to borrow some money to take a timber claim, I dare say you could have done it, could you? A. Yes, almost any time.

Q. Isn't it a fact that really your attention was not directed to the matter, and that you had never given it any serious consideration to the question of taking claims?

A. At that time I had not, sir.

Q. You do not think you would have been embarrassed at all by borrowing the money necessary to prove upon the land if you wanted to?

A. I could have borrowed it easily; it would have been no trouble.

Q. And now that you have spoken about what you know, what you don't know about the property of these people or what one of them to which your attention has been called by the counsel are you able to say that you know he did not have money enough of his own to have bought 160 acres of land under the Timber and Stone Act if he wanted to take it up?

A. Why, I don't know of my own knowledge of any of them, but what they might have money enough to buy or take two claims.

(Testimony of Clarence R. Prescott.)

Q. What knowledge have you concerning any credit they might have at any place that would enable them to borrow the money if they desired?

A. I have none.

Q. Also speaking about these people who desired to prove upon claims upon the public land, and that kind of thing, you have heard of them borrowing money from persons with a view to prove up on claims?

A. Yes, sir.

Q. Do you know of any persons in or about Missoula who have been engaged more or less in the business of loaning money to people and taking mortgages upon land?

A. Why, I guess it would be no trouble for a man to get money to prove up either from the bank or individuals who had money to loan.

Q. You know of that as a branch of business in Missoula, do you? A. Yes, sir.

Q. What opportunity, if any, do you have, Mr. Prescott, to become acquainted with these people who live in the counties of Deer Lodge and Ravalli?

A. Why, I don't have very much opportunity; I do not go up away into the Clearwater country there; in fact I haven't had any business up there; there was only one person to assess at the time that I was assessor on the Clearwater, and that was the Clearwater Land and Cattle Company, so I did not have to go clear up there as assessor; I only went into Potomac Valley.

(Testimony of Clarence R. Prescott.)

Recross-examination.

(By Mr. MAYNARD.)

Q. You stated in reply to my esteemed brother things that you did not know. Now, I will ask you as to things you do know?

Mr. WALSH.—You have already asked them.

Q. I will ask you do you know of one of these men or women whose names I have mentioned and to whom your attention has been directed that either had an estate personal or real or credit in themselves that in your opinion would justify any man as a business proposition in loaning them between four and five hundred dollars without any security whatever?

Mr. BICKFORD.—We object to the question for the reason that the witness has not qualified as an expert upon the financial ability of any person in Missoula County, and that it is not proper cross-examination, and not relative to any facts.

Q. With the exception possibly of George Dildine?

Mr. BICKFORD.—The same objection.

A. Why, I don't know anything about their financial standing.

Q. So you cannot say that you know one of them that either had property or credit that from your knowledge either personal or from their general reputation in the community in which you have lived for twenty years that you could say was strong enough to enable them

(Testimony of Clarence R. Prescott.)

to secure between four or five hundred dollars from anybody as a business proposition?

Mr. BICKFORD.—Objected to because a repetition of the question just asked the witness.

Mr. MAYNARD.—Well, if he understand that.

A. Well, Dildine could get all kinds of money.

Q. Well, I said with the exception of George Dildine?

A. Well, I don't know whether you wanted him embodied in the second question or not. I cannot tell what people have money, and who had not.

Q. Now, in reply to my brother who asked you something about whether it was unusual and so on—let me ask you this question. Did you ever hear in your life of any such proposition as this, that a man or woman without a dollar's worth of property of any kind, with possibly the exception of a horse or two or three "cayuses" or a wagon or something of that kind, going to a stranger and without any security of any kind, obtaining money from him to buy 160 acres of land?

Mr. BICKFORD.—The same objection.

Mr. WALSH.—Also immaterial and argumentative.

Q. Did you ever hear of such a proposition as that?

Mr. WALSH.—Also as calling for the opinion of the witness and asking for no facts.

A. Why, I don't know of my own knowledge of such an occurrence; I am not acquainted with such.

Q. You never heard of such a thing as that?

(Testimony of Clarence R. Prescott.)

A. Why, no.

Q. Do you know of any man in Missoula County from your experience as a citizen and as an official that has ever loaned to between four and five hundred dollars to a comparative stranger without receiving any security from him of any kind to enable him to go and buy 160 acres of land? A. No, I don't.

Q. Now, you say that you knew of a good many of these entries that were taken up; did you know any of these men or women that I have called your attention to at the time of taking them up?

A. Why, I answered as you named them over, as to whether I knew them or not. I don't believe I claim to know any of the women, except Mrs. Dildine.

Q. What I mean is, did you during that summer of 1899, when you were assessor and when these entries were being taken up under the Stone and Timber Act, did you know any of them?

A. No, I think not; possibly I did not and possibly not.

Q. Now, I will ask you as to whether or not the conditions and circumstances of these people taking up in such numbers these entries—making these entries under the Stone and Timber Act, did not excite talk and conversation in the city of Missoula to your knowledge?

A. Why, I heard people talking about it, talking about timber claims and getting out and rustling a claim, and getting a good claim and all of this; I used

(Testimony of Clarence R. Prescott.)

to hear people talking about this one and that one getting out and getting a good claim, and some other fellow's claim would not be as good, but I did not pay much attention to it.

Q. Didn't you know at the time the purpose for which these entries were being made?

A. No, I did not.

Q. You never heard that talked about?

A. I never paid any attention to it; I did not hear it at the time, no, sir.

Q. By anybody?

A. No, sir. Of course they took that up to get the timber, I knew that. People were trying to get timber claims, probably to sell it or for any other purpose. Lots of people took up claims that way that could not buy a sawmill to put on them.

Q. Didn't you know at the time; didn't you hear talk, Mr. Sheriff, that these people were taking up these entries, making these entries in such unusual numbers for the express purpose of at once, after making their final proof, selling the land and the timber on it for what they could get out of it?

A. I knew that that was what they intended doing, but I did not hear much talk about it. There was no fairy land that was left to take; they were taking almost anything that was of value, timber on the stream or timber land that when the timber would be removed would make agriculture land.

Q. Didn't you hear at that time that that was what

(Testimony of Clarence R. Prescott.)

they were doing it for, that Mr. Cobban was buying these lands?

A. I did not know that Mr. Cobban was buying land at that time in 1899; I did not know until in fact he bought a lot of the land that he was engaged in the business of buying timber land, until I heard that he had bought quite a good deal of land, probably in the fall or somewhere along there.

Q. When was the first that you heard about this transaction?

A. Probably in the fall of 1899, or the late summer.

Q. Then in the summer of '99, you heard about the irregular character of this deal?

A. I know that Mr. Cobban had a lot of land; I assessed a lot of land to Mr. Cobban, and he came and made some changes in his assessment list, some of the lands that I had assessed to Mr. Cobban—I don't know what year it was in now—if you will just be patient with me—he had changed from his assessment list to Mrs. Largey, and some to W. A. Clark, and later on he sold the balance, I believe, if I remember rightly. Is that right, Mr. Cobban?

Mr. COBBAN.—I believe so.

The WITNESS.—I do not know what year that was. Of course, I was only assessor two years, and that would be 1899 and 1900.

Q. Then you did not hear anything about these peo-

(Testimony of Clarence R. Prescott.)

ple making entries under the Timber and Stone Act and conveying to Cobban; you did not know anything about that or hear anything about it from any source until after Mr. Griswold commenced his suit, do you so swear?

A. I never heard anything of the kind. Of course I knew people were talking that, and I knew that Mr. Cobban was buying land; anybody that would read the papers would see the transfers, but I never heard any kick or howl until after the suit was started; in fact, I did not know there was any trouble with anyone, and I did not know there was anything to be trouble over.

Q. You say people were doing this and Cobban was buying from them?

A. I knew that people were taking up the claims and perfecting title, and disposing of them either to Cobban or to the Blackfoot Company; they were all buying; there was not much difference.

Q. In the summer of '99?

A. I think it was '99.

Q. Can you name any man or woman that took up a claim and sold to the Blackfoot company of your own knowledge? A. No.

Q. You could not name one? A. No, sir.

Q. Can you name any that sold to Cobban in '99?

A. No, sir.

Q. Don't you know any that sold to the Blackfoot Milling Company in 1899?

A. Not that took the claim up at that time.

(Testimony of Clarence R. Prescott.)

Q. As a matter of fact do you know that they were buying at all during that summer, the Blackfoot Milling Company?

A. Why, I heard of several sales.

Q. Do you know of your own knowledge whether that company was buying during that summer?

A. Well, I didn't know of any where I was present at the sale; and I never looked at the records.

Q. Do you know of anybody that told you they had sold to the Blackfoot Milling Company?

A. I have occasion when assessor to assess lots of people that would come in and have the assessment corrected and the timber perhaps on the claim charged to the Blackfoot Milling Company. The records are there; they are just the same as they were then, and they can be seen.

Q. And whether it was in 1899 or 1900, you could not say?

A. No, I could not, but perhaps in both years.

Redirect Examination.

(By Mr. WALSH.)

Q. When was it that you first heard the claim made about Missoula that the entries referred to in the bill of complaint were made fraudulently and in the interest of Mr. Cobban?

A. Why, about the time that suit was commenced by Griswold against Cobban.

(Testimony of Clarence R. Prescott.)

Q. And up to that time as I understand, you have never heard that theory of the matter advanced?

A. Well, I don't remember it, sir; I don't remember it.

_____.

Subscribed and sworn to before me this —— day of ———, 1902.

_____,

Standing Master in Chancery and Examiner.

I do hereby certify that I have read the testimony of the above-named witness, Clarence R. Prescott, and that the same has been correctly transcribed.

HENRY N. BLAKE.

CHARLES H. McLEOD, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Where do you reside, Mr. McLeod?

A. Missoula.

Q. How long have you lived there?

A. Twenty-two years.

Q. What has been your occupation or business since you have been living in Missoula?

A. I have been engaged in the mercantile and lumber business.

Q. In connection with what company have you been engaged in the lumber business?

(Testimony of Charles H. McLeod.)

A. The Big Blackfoot Milling Company.

Q. When was your connection first formed with that company? A. In 1885.

Q. When did it terminate?

A. In August, 1898, I think.

Q. Are you acquainted with that section of country known as the Big Blackfoot country?

A. Yes, sir.

Q. How long have you known that country up there?

A. Twenty years or twenty-two years.

Q. I will ask you to state whether you one Chauncey L. Griswold? A. I do.

Q. How long have you known him?

A. I think about eight years.

Q. Do you know his reputation in the community in which he lives for truth, honesty and integrity?

A. His reputation is not very good for honesty.

Q. You know it, do you? A. Yes, sir.

Q. Is it good or bad? A. It is bad.

Q. I will ask you to state whether or not in the summer or fall of 1899, you had any talk with any person who had made a timber and stone entry on the Big Blackfoot river with reference to buying the timber or claim?

A. One party I remember distinctly.

Q. Who was the party?

A. Mrs. George Dildine.

Q. Where does she live? A. In Missoula.

(Testimony of Charles H. McLeod.)

Q. What was the conversation that you had with her with reference to the matter?

A. Well, she came to me and claimed that she had a timber claim on the Big Blackfoot which she wished to dispose of, and at that time we were not buying timber on the Big Blackfoot and I told her so.

Q. What have you to say with reference to any other person or persons talking to you about the sale of timber lands in the Blackfoot country during the summer of 1899, or the fall of that year?

Mr. MAYNARD.—We object to that question as leading and as having already been asked and answered; he said one person had spoken to him in regard to it and named the person.

A. Mr. Cobban is the only other person I remember of.

Q. Do you remember having a conversation with Mr. Cobban with reference to the matter? A. Yes, sir.

Q. When was it?

A. Well, I am not positive; I think in the fall of 1899.

Q. Was that with reference to any particular quantity or any specific quantity of land?

A. A large quantity of land.

Q. At that time was it land that he owned in the Blackfoot country? A. Yes, sir, he claimed to own it.

Q. Did you as a matter of fact buy any land from him at that time, any timber land?

A. No, he wanted me to aid him in selling some timber lands to the Big Blackfoot Milling Company.

Q. What did you do with reference to that?

(Testimony of Charles H. McLeod.)

A. I told him I would see Mr. Vogel, their timberman, in regard to the matter, and did so.

Q. Did it result in any sale?

A. No, sir, Mr. Vogel claimed that his estimates were too high, and the price he asked for the timber was more than his company would pay.

Q. Then it resulted in negotiations, no sale being made?

A. No, sir.

Q. Are those all of the persons you now remember having talked with during the summer or fall of 1899 with reference to the sale or purchase of timber lands on the Blackfoot? A. That is all I can recall at this time.

Q. What have you to say with reference to John B. Reeve having talked to you concerning a matter of that kind?

Mr. MAYNARD.—I object to that as leading; twice he has undertaken to say how many people he has talked to.

A. I don't remember any other.

Q. You say you have been engaged with the Big Blackfoot Milling Company for a good many years; what have you to say with reference to the advancing of money and the purchase of timber lands from the entrymen after the time when final proof had been made; have you ever done that?

A. We have; I have bought timber lands from parties who had claims and titles to the claims in that neighborhood.

Q. I will ask you if you have ever loaned people money with which to make their final proof on timber claims?

(Testimony of Charles H. McLeod.)

A. No, sir.

Q. Never made any loans of that kind?

A. No, sir.

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. McLeod, how long did you say you had been connected with the Big Blackfoot Milling Company?

A. Since 1885; from 1885 until 1898.

Q. In what capacity?

A. I was a stockholder of the company and a director.

Q. Did you have anything to do with its management?

A. As a director, yes, sir, in an advisory way.

Q. You were simply a director, but held no salaried position?

A. No, sir. I represent the president sometimes.

Q. Where do you live? A. Missoula.

Q. Where were your mills?

A. At Bonner and other sections of western Montana.

Q. You were engaged, then, during all these years in other business? A. In the mercantile business.

Q. In the Missoula Mercantile Company?

A. Yes, sir.

Q. And that was where you spent your time?

A. Most of my time.

Q. The active management of the company was left to other hands?

A. To a certain extent, yes, sir.

Q. In other words, you had no more to do with the com-

(Testimony of Charles H. McLeod.)

pany than any man had who is a director in these different manufacturing institutions?

A. Yes, I had more than that.

Q. Well, what?

A. Mr. A. B. Hammond was president of the company, and he was away a good deal, and I represented him when he was away in regard to all consultation and all actions of the company; they were referred to me in a great many instances before action was taken in the matter.

Q. But your home was in Missoula all the time?

A. Yes, sir.

Q. Did Mr. Griswold have his home in Missoula?

A. Not all of the time, no, sir; he operated in the Big Blackfoot valley more or less.

Q. Did he ever live in Missoula until within the past year or so?

A. About three years, I think, he has been living in Missoula.

Q. His residence was in Missoula for the last three years?

A. I cannot say exactly, but about three years?

Q. I mean since he moved down?

A. That is about three years ago.

Q. You have known him during that time, whatever space it was? A. Yes.

Q. If, as a matter of fact, he has lived there about a year, it is a year? A. He has lived there longer.

Q. And if he has lived there three years, it is three years? A. Yes, sir.

(Testimony of Charles H. McLeod.)

Q. Did you know him at all previous to his moving to Missoula? A. Yes, sir.

Q. Where?

A. He was a contractor for the Big Blackfoot Milling Company for a time, and then I knew him when he came out first from Wisconsin, representing some eastern parties, I believe, in the lumber business, buying timber lands in the Big Blackfoot.

Q. What acquaintance did you have with him?

A. Well, I had quite an intimate acquaintance with him in a business way, and being familiar with his contracting with the Big Blackfoot Company, I knew him that way, you know. I met him a great many times and knew him very well.

Q. When he was living up in the Blackfoot country, how many miles was it from his home to Missoula?

A. Oh, I guess 40 miles. He would come to Missoula very frequently, though, and spend a good deal of time in Missoula, when he was living on the Blackfoot.

Q. Did you ever have any business dealings with him?

A. Yes, sir.

Q. What?

A. Well, I sold him lots of things, merchandise, for some of which he has never paid up to the present time. He owes money at the store, which we consider valueless; he does not pay his bills.

Q. He is conducting a grocery business in Missoula now, is he not?

(Testimony of Charles H. McLeod.)

A. I think his wife is conducting the business; my understanding is that the business is in his wife's name.

Q. Does he buy some of the things from your store now?

A. His wife does, yes, sir; his wife conducts the business and she buys some stuff from us.

Q. Buying at this present time? A. Yes, sir.

Q. Do you extend credit to her?

A. To a very limited amount.

Q. Well, the business is such that a large amount of credit is not required, is it?

A. I guess it would be if he could get it.

Q. Why do you extend any credit at all?

A. I do not extend credit to him; we extend credit to Mrs. Griswold because the property is in her name.

Q. How much credit do you extend to Mrs. Griswold?

A. About $200 is the limit.

Q. For how long a time?

A. From month to month.

Q. How long have you been extending credit to Mrs. Griswold, who is conducting the business there for her husband?

A. About six months, as near as I can remember.

Q. Has that credit been abused in any way?

A. We don't allow it to be; when they don't pay they don't get the stuff.

Q. But for six months you have extended them credit for 30 days, and at the expiration of 30 days the bills have been paid?

(Testimony of Charles H. McLeod.)

A. Yes, sir; if they were not paid they did not get any more credit.

Q. That is no different than it would be with any other man that you were dealing with?

A. No, sir; it all depends; sometimes those things are extended.

Q. Have you ever had any other transaction in your life with Mr. Griswold where he has wronged you in any way; if so, state it?

A. Well, when Mr. Griswold did business in his own name, we credited him for merchandise, for which he has never paid.

Q. What was the amount of that?

A. About $500.

Q. Then he is owing you now $500? A. Yes, sir.

Q. Which he has as yet not paid?

A. No, sir.

Q. How long has that been mature?

A. About four years.

Q. Is there anything else? A. No, sir.

Q. Is that the only dealing that you had that you can criticise with Mr. Griswold?

A. That is the only dealing in a direct way that I care to criticise.

Q. In your long experience you have had more than one man who has owed you $400 or $500 and has not paid, haven't you? A. Yes, sir.

Q. A great many, haven't you? A. Yes, sir.

(Testimony of Charles H. McLeod.)

Q. Some of them did not pay because they were unfortunate and sick?

A. Some have been unfortunate, and some did not care to pay their bills.

Q. Now, if that is all you know abou tMr. Griswold as far as any personal knowledge is concerned, now tell me what you know from anybody else?

A. Well, I have no statements to make. Mr. Griswold's reputation in our community is bad.

Q. His reputation for what?

A. For truthfulness; in other words, he is considered a man that does not tell the truth; that is his general reputation in our community. It is well known.

Q. That is in the city of Missoula? A. Yes, sir.

Q. Now, I want you to tell me, Mr. McLeod—you make that sworn averment here—I want you to tell me what you base it on?

A. I base it on my business relations with him.

Q. You have just told what your business relations have been; now, tell me something else?

A. Well, I don't know—I know that Mr. Griswold, his conduct in our community has been such that no business man would credit him, that they do not consider him honest, and that he has a reputation of being a man that will tell a lie when it is beneficial to him to do so. That is all I can say about the gentleman. I could not tell you more than that if I talk all day.

Q. That is enough, if you have anything to base it on.

A. Well, there are a great many things that I base that

(Testimony of Charles H. McLeod.)

opinion on, and there are some things that a man can not express.

Q. I ask you to name one—you have not named but one, and that is the fact that he owes you $500. If every man who owes you $500 is to have his character blackened here, I want to know it.

Mr. BICKFORD.—I move to strike out the statement of counsel.

The EXAMINER.—Well, you can put all the questions you wish to the witness.

Mr. MAYNARD.—You can put that in your democratic address to-morrow, Mr. Walsh; that is the commercial way of doing things.

Q. Now, name other things if you have any?

A. I say I have nothing else to name.

Q. Before Mr. Griswold appealed to the Court to recover a money judgment against Mr. Cobban in this land transaction, I want you to name and give me the name of one man that you ever heard say anything against Mr. Griswold's honor or truth or integrity?

A. I have no other statement to make in regard to Mr. Griswold.

Q. All right, sir. Now, you say that you have a recollection of one person of these entrymen and entrywomen, and that is Mrs. George Dildine, speaking to you in regard to whether your company would buy their claim or not. When was that?

A. That was about two years ago, I think; I cannot

(Testimony of Charles H. McLeod.)

remember the date. People came to me and asked me frequently; several parties asked me those questions, but she is the only one I distinctly remember, since the people that I was connected with disposed of their interest in the Big Blackfoot Milling Company.

Q. Who were the people that you were connected with that sold the Big Blackfoot Company. There was Mr. Hammond, wasn't it?

A. Yes, sir, Mr. Henry and Mr. A. B. Hammond and Mr. Hathaway and Mr. Keith, and other gentlemen.

Q. Are you related to any of these men by marriage or otherwise? A. I am by marriage, yes, sir.

Q. You are a son in law of Mr. Hammond, are you not?

A. No, sir, I married a niece of Mr. Hammond.

Q. Now, the Government has commenced prosecutions against the Hammonds and others to recover for the fraudulent taking of Government timber, has it not?

A. No, sir.

Mr. BICKFORD.—We object to that as not proper cross-examination and irrelevant.

The WITNESS.—When do you mean?

Q. Don't you know that there are cases now pending against those companies in which the Hammonds either have stock now or did have stock before they sold out to the Big Blackfoot Milling Company?

A. I don't know.

Q. You have heard, haven't you?

A. No, I haven't.

Q. Didn't you know that there were suits pending

(Testimony of Charles H. McLeod.)

now in this Court, brought by the Government against the Big Blackfoot Milling Company and the others for the unlawful conversion of Government timber?

A. I did not.

Q. You did not know that? A. No, sir.

Q. Now Mrs. George Dildine, has called upon you within the last few weeks, hasn't she, and asked you in regard to this conversation?

A. She did, yes, sir.

Q. And asked you if you didn't remember it?

A. Yes, sir.

Q. And it is by reason of that conversation that she had with you that you come here and swear that you had the conversation with her, isn't it?

A. No, sir. Mrs. George Dildine asked me if I remembered the conversation, and I told her that I did remember it.

Q. But previous to her calling your attention to the conversation and asking you if you didn't remember that you had had a conversation with her, and her calling upon you that way, had you any independent recollection of the fact?

A. I would have remembered if I had had anyone call my attention to it.

Q. Now, you say that others have called upon you and you had no recollection of it?

Mr. BICKFORD.—He did not say that and we object to the question for the reason that the witness has not so testified.

(Testimony of Charles H. McLeod.)

Mr. MAYNARD.—What did he say?

Mr. BICKFORD.—I say he didn't so testify.

Mr. MAYNARD.—Well, I say he did.

The EXAMINER.—Read the question; he can correct it if he did not so testify.

A. I say that others called on me frequently and I recollect people calling on me frequently. I do recollect Mrs. George Dildine, because I think she came once or twice, and when she called my attention to her coming to see me about it, I distinctly remembered it.

Q. Didn't you say that you had no distinct recollection of any of these entrymen calling upon you except Mrs. George Dildine?

A. No one. I cannot state who they were except Mrs. George Dildine. Other parties have called, but I don't remember who they were now.

Q. Please tell me what there was about the fact and circumstances of Mrs. George Dildine that fastened itself upon memory?

A. Because I know the lady quite well.

Q. Just what did she say?

A. She stated that she had a claim up the Blackfoot and wanted to know if I would buy it, as near as I can recollect, and I told her no, that we were not in the lumber business at that time.

Q. Do you know where that conversation took place?

A. I think it was in our store in Missoula.

Q. You think it was?

(Testimony of Charles H. McLeod.)

A. Yes, sir, in the office of the Missoula Mercantile Company, as near as I can recollect.

Q. That was all the conversation there was?

A. Yes, sir, as near as I can recollect. There might have been other conversation, but I don't remember. I remember the incident quite well.

Q. Now, was your company the Blackfoot Company operating on the Nine Mile at that time in the season 1899? A. I don't think we were.

Q. Where were you operating on the Big Blackfoot?

A. We were not operating at all in 1899; we had sold out I think, prior to 1899.

Q. Was the Big Blackfoot Milling Company doing any business that year?

A. The Big Blackfoot Milling Company, were, I think, doing business; they had been doing business every year since they have been in the business there.

Q. Were they doing any business on the Blackfoot?

A. I don't remember; when we disposed of our interest in the Big Blackfoot Milling Company. I did not keep any further track of where they were operating.

Q. Do you know anything about their business in 1899?

A. I know that they ran the Bonner Mill, and I know that they had other mills operating for them, but where they were I don't remember—what mills they were now,

Q. But you had nothing to do with it?

A. No, sir.

(Testimony of Charles H. McLeod.)

Q. When did you stop having anything to do with that company?

A. When we disposed of our business—I think it was in August, 1899; I cannot quite remember.

Q. August, 1899?

A. August, 1898, I should have said; I think that was the date, but I cannot swear positively to the date. It was August, 1898, as near as I can recollect. Mr. Henry Hammond was the manager for the business for some little time afterwards, I do not know how long; about six months, I think.

Q. So that, when Mrs. Dildine called upon you, you had sold out your interest for about a year?

A. That is as near as I can recollect.

Q. You knew her quite well. Do you remember whether you told her that for about a year you had had no business relations with that company?

A. I don't know whether I told her that; I told her we were not buying timber at that time.

Q. You were not buying timber at that time because you were not in the business any longer?

A. Yes, sir.

Q. And had not been for a year?

A. I don't know whether I told her that or not; I don't know that I stated to her how long we had been out of the business.

Q. Now, Mr. McLeod, my brethren on the other side have asked you in regard to the question of whether you had ever heard of a loan being made. Now, let me

(Testimony of Charles H. McLeod.)

propound a question to you on that subject. Suppose you were in the place of Mr. Hammond, the President of the Big Blackfoot Milling Company at the time you were running the business as the representative of the President, and a man who did not have a dollar in the world to speak of and no real estate and no personal property of any kind, with the single exception possibly of a team of cayuses and a dilapidated wagon and possibly a cow and a shack of a house—suppose he would come to you and make this business proposition. He said being the man that I have named—"I want to take up 160 acres of Government land under the Stone and Timber Act, and I want you to give me all the money that will be required to make that entry and to pay for the land and to pay for the publication required by law." Would you advance that money and give him all that money as a business proposition, without his giving you anything at all as security except his word?

Mr. WALSH.—That is objected to as not proper cross-examination and not calling for any fact from the witness at all and as purely hypothetical and based upon no fact, concerning which there is any evidence here, and because the same is immaterial and irrelevant.

A. No.

Q. Did you ever hear of a business man that was sane doing any such thing as that?

Mr. WALSH.—The same objection, and also that the question is simply argumentative.

(Testimony of Charles H. McLeod.)

A. No, I never heard of such a case.

Q. Did you ever hear of a business man being willing to take the simple note of a man such as I have described as security for his loan, with no time fixed for its payment, and with no rate of interest named therein?

Mr. WALSH.—The same objection.

A. I know of no business done that way.

Q. Do you know of any business deals by which a man who had money to loan would loan the entire amount that was necessary to purchase the 160 acres without any other security at all than the land that was to be bought?

A. It would depend upon the value of the land.

Q. What do you mean by that?

A. Well, I mean that if a man wanted $600, for instance, to prove up on a piece of land, and I considered it worth $1,000, I would let him have the money.

Q. Very well. But what would you have to secure the advancement of the $600?

A. I would want a mortgage on the land.

Q. And when would you want the mortgage?

A. When he had the title.

Q. What would you do about the loan previous to the securing of the title?

A. I would not make the loan unless I felt sure that he would—unless I was confident he would give me the mortgage after he had proved up on the property.

(Testimony of Charles H. McLeod.)

Q. So that in every case there would be a prior agreement existing between yourself and the man to whom you would make the loan, before you would let him have the money, either that he would sell to you or that he would mortgage to you after he had obtained title?

A. It would all depend on my confidence in the man.

Q. That is what I say; there would necessarily be a prior agreement one way or the other, wouldn't there?

A. There would have to be a prior agreement, or I would have to believe that the man would pay me back my money either by mortgage to me or mortgage to somebody else, and refund my money that I loaned.

Q. You would have a definite arrangement with him, wouldn't you?

A. Well, it would depend on the character of the man whether I would or not. There are some men I would loan $600, to without any security, that had nothing, and there are other men that I would not.

Q. I am talking now as a business proposition.

A. That would be a business proposition.

Q. Not to know when he was going to pay you back?

A. No, I would want to have some understanding when the money was to be returned.

Q. Certainly, and you would want to know, not only when the principal was to be paid back, but you would like to have something understood as to whether or not it was to draw interest, wouldn't you?

A. Yes, sir, I would.

(Testimony of Charles H. McLeod.)

Q. You would want to have all the details fixed before you extended the credit to the man?

A. As a general rule, yes, sir.

Q. To which there would be no exceptions, because you could have no other standing as to anything about it could you; unless you did have an agreement of some kind? A. Not always.

Q. Name some exception now?

A. Well, it would depend; that would be the business way.

Q. Pick out the most honest man that your imagination can suggest, and he, himself, would want to know what he had to do, wouldn't he?

Mr. WALSH.—Objected to as argumentative.

A. I don't know about that; I can't answer that. Some of these fellows don't want to know.

Q. I am talking about an honest man?

A. An honest man would want to pay his bills. All honest men do not know when they can pay.

Q. But there would be some kind of an agreement, wouldn't there, between the man that loaned the money and the man that received the money as to when it was to be paid?

Mr. BICKFORD.—Objected to as argumentative and not proper cross-examination; also as purely hypothetical and calls for no facts from the witness whatever.

A. As a rule, yes, sir.

Q. Now, tell me, Mr. McLeod, in your experience as a lumber man, as you have testified, of one case that

(Testimony of Charles H. McLeod.)

you have ever heard of, that has ever come to your personal knowledge, where any individual or any company that you have been connectel with has loaned in advance all that was required to make the purchase of Government land. Name one case.

A. I cannot name a case; I have known the bank that I am connected with to make such loans.

Q. What bank is that?

A. The First National Bank of Missoula. I have known them to make a loan this way, to loan a man, for instance, enough money to make his final proof, to prove up on his property, and then after he had secured patent to the property, he would mortgage it for the amount either to some member of the bank or some friend of the bank that had the money to loan. I have known of such cases as that, where the bank had confidence in the man that had this property, and believed that after he proved up he would either refund the money or secure it in some manner. I cannot name any special case, but I know that that has been done in a general way a great many times. Of course, the bank would know the individual, and believe that the individual would do as he agreed, that after he had proved up on the property he would get the money in some way to return to the bank the loan that they had made him.

Q. Do I understand then that that is a straight loan made by the bank to the buyer?

A. Yes, sir, to the individual.

(Testimony of Charles H. McLeod.)

Q. He would give his note? A. Yes, sir.

Q. Now, would not the bank require an endorser?

A. Not always.

Q. Just take the single note of the individual?

A. Yes, sir.

Q. And where he had no property at all of any kind?

A. Not any property. If course, they would expect that he would acquire property, and would loan him this money to acquire property, knowing that by giving him the money he could acquire property and in that way he would have something to pay his bills, that he could either mortgage the property or sell it and return the money.

Q. That is what I am getting at. You know then, of such cases as the one I have described to you, or extending it a little?

A. I know of no cases where a man that was unknown could get money, where the bank or the people having the money were not acquainted with him, but only in cases where they knew the man and believed in him and believed that he was honest. I have known cases where they have loaned money in that way, by the party making a statement that if they would loan him a certain amount of money that he would return that in a certain time and how he expected to return it, that he was going to prove up on property and needed this money to make his final proof, and that when he acquired title he would either mortgage his property or sell it in order to refund this money—not to mortgage

(Testimony of Charles H. McLeod.)

it to the bank necessarily; they did not know to whom he would mortgage it, but they believed that the property was valuable and that he could mortgage it and that he could acquire title to the property.

Q. Well, he would not mortgage it to the bank, but he would mortgage it to the president of the bank or some officer in his individual capacity?

A. No, I did not say that.

Q. But that is the truth?

A. It might be an officer of the bank or it might be people on the outside who would loan the money, because they would believe the man that required the money would return it. Lots of men borrow money who have no property; lots of men have credit who have no property.

Q. I know that of course, but in those cases the man's credit was his integrity, wasn't it?

A. Yes, sir.

Q. That was the basis on which the bank would extend the credit to him?

A. That is the basis of all credit.

Q. In a general way that is true, of course, but that is so in every case, it is the sole basis for credit where the bank loans money to a man whom they whow has not got a cent of money back of him, isn't it.

A. That is right.

Q. His integrity is the only basis upon which the credit is extended where the borrower has no estate of his own? A. Yes, sir, that is true.

(Testimony of Charles H. McLeod.)

Q. And have you never heard of a case of your bank or anybody else that was a business man loaning money to a stranger or to a man who had little or no integrity?

A. I know of no case of that kind.

Q. In each and every case where it was done to your knowledge as far as the bank is concerned, the entire details of the transaction were disclosed and made known to the bank, were they not?

A. They would have to be.

Q. And the particular piece of land that was about to be taken up and its value?

A. They would have to know that, yes, sir.

Q. And the time when the final payment would be made and when the receiver's duplicate receipt would be received by the entryman, they would want to know all of that; they would want to know that as to whether they could secure themselves for that amount. They would want to know when he was going to prove up and about how long before he would be able to refund the money.

Q. And they would want to be further satisfied that the land that he was about to take up and acquire title to was sufficient security for that loan?

A. If they had to take it, yes, if they finally had to take the land for the security, they would want to know that it was worth that much money.

Q. So that in that case the only chance that the bank would take would be their having placed their confidence in the wrong man? A. Yes, sir.

(Testimony of Charles H. McLeod.)

Q. And you have known cases where they were willing to take that chance? A. Yes, sir.

Q. But only where they had known the man and they felt that from the knowledge they had of him that they were justified in that conduct? A. Yes, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. McLeod, in your experience in business up in that country, do you find the settlers and farmers and ranchmen up in that section of the country so wanting in integrity as a general rule that you could not trust them between the time of getting the money out of the bank and the time of getting the final receipt from the land office? A. As a rule, no.

Q. As a rule they are worthy to be trusted to that extent? A. Yes, sir.

Q. Also, is your acquaintance with the details of those business transactions sufficient to enable you to say whether in those instances it is customary to give the money over to the entryman and take chances upon his turning it into the land office, or for the parties who loan the money to turn the money into the land office so as to see that it is applied to the purchase of the land?

A. It would depend on the individual.

Q. I will ask you if you know, if you are sufficiently familiar with the details of that business to know which way it is ordinarily done? A. No, I am not.

Q. If the confidence of the loaner in the individual

(Testimony of Charles H. McLeod.)

was not particularly strong, he would naturally turn the money into the land office himself, you think?

A. Yes, sir.

Q. If he had perfect confidence in the entryman, he might turn it over to him? A. Yes, sir.

The EXAMINER.—Mr. McLeod return to Missoula to-night, and if it is agreeable I can certify to his testimony instead of bringing him back to sign it.

Mr. MAYNARD.—I am not willing to excuse Mr. McLeod, but we can let this matter stand as it is, and let the testimony go in under the certificate of the Master, and then if I want call Mr. McLeod back again, I can have the privilege of recalling him as the defendant's witness.

Mr. BICKFORD.—Certainly. That is perfectly satisfactory.

_____.

Subscribed and sworn to before me this —— day of ————, 1902.

_____,

Standing Master in Chancery and Examiner.

I do hereby certify that the testimony of the witness, Charles H. McLeod, has been correctly transcribed.

HENRY N. BLAKE,

Examiner.

Tuesday, April 15th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

THOMAS C. MARSHALL, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Marshall, where do you reside?

A. At Missoula, Montana.

Q. What is your business?

A. Practicing law.

Q. How long have you practiced the profession of law in the State of Montana?

A. Since May, 1883.

Q. Mr. Marshall, do you remember of the pendency of a suit in the District Court of Missoula County, brought by one Chauncey L. Griswold against R. M Cobban? A. I do.

Q. To recover for services alleged to have been performed for Mr. Cobban? A. I do.

Q. And what connection, if any, did you have professionally with that law suit?

A. I represented Mr. Cobban in the defense of that suit.

Q. Were you present at the time that the controversy involved in that lawsuit was adjusted and settled between the parties? A. I was, sir.

Q. I wish you would state whether at or about the time of the settlement Mr. Griswold made an affidavit

(Testimony of Thomas C. Marshall.)

touching any of the matters connected with the lawsuit at your office?

A. He did at the time of the adjustment of the controversy, in my office, sign and verify an affidavit.

Q. I show you Defendant's Exhibit "E," and ask you if that is the affidavit to which you refer?

A. Yes, sir, that is the affidavit to which I refer.

Q. Now, Colonel, I wish you would state what the facts and circumstances were connected with the execution of this affidavit by Mr. Griswold.

A. Yes, sir. We had gone into the trial of the case before Mr. Murray, as referee, and had taken some proof, and negotiations were opened through the intervention of some friend of Griswold's, whose name I do not now recall, and it resulted, as I understood, in an agreement as to the amount that should be paid to Griswold in compromise of the controversy. Griswold had also said in the proposition to compromise that if it were compromised—that he had made an affidavit at the instance of Mr. Zevely, which contained matters which were not in accordance with the facts, and that he would make an affidavit for Mr. Cobban's protection that would state with respect to that matter what were the facts in regard to it, and would be in contradiction to the affidavit made for Mr. Zevely. The gentlemen appointed a time to meet at my office at which was to be submitted an affidavit prepared in accordance with Mr. Griswold's suggestion. I did not prepare the affidavit, and I was not present when it was prepared, but

(Testimony of Thomas C. Marshall.)

the affidavit was brought there; Mr. Griswold came with his attorney, Mr. Draffin, Mr. Cobban and Mr. Howell and Mr. Stiff and myself were there. Mr. Draffin examined the affidavit; he came with Mr. Griswold, and they said that Mr. Griswold could not make that affidavit, and some suggestions were made and it was discussed, and Mr. Griswold said something about that he did not want to make an affidavit that was not true, and I said that we did not want him to do that, that I wanted it distinctly understood that if any affidavit was to be made which was not in accordance with the facts I was not to be a party to it. It was then agreed that Griswold and Draffin would take this affidavit and retire to Draffin's office, that they would revise it, and as revised by them, it was to be prepared and Mr. Griswold would make the affidavit. They came back—appointed a time and met at my office, the same parties, except that Major Duncan, Draffin's law partner, was with them. They brought that affidavit which had been prepared.

Q. You refer now to exhibit "E" for the defendant?

A. Exhibit "E," yes, sir, which had been prepared or revised from the affidavit which had been brought in the first instance, and afater some considerable discussion of it, Griswold, standing up at the end of the table and repeating substantially what is in that affidavit, he signed it and swore to it before Mr. Stiff as a notary public.

Q. Now, at that time, Colonel Marshall, what have

(Testimony of Thomas C. Marshall.)

you to say as to Mr. Griswold having read the affidavit over before he signed it?

A. If he read it over I do not recall it, but he stated, without reading the affidavit, what was in it substantially, and particularly with respect to the fact that Cobban always instructed him not to make any contracts; that was the proposition that he reiterated more than once, and reiterated the truth of it, and said that he could consistently make the affidavit because of the fact that it was true.

Q. What have you to say as to his acting under compulsion or threats or duress at that time?

A. There were, as I suggested, all of these gentlemen there present, and Mr. Griswold came up, as I say, and stood at the end of the table, and he talked, and unless he was hypnotized by somebody absolutely without any influence being exercised there at the time. Of course, I don't know what had occurred before they came there, but he acted absolutely of his own volition there.

Q. What have you to say as to the secrecy or publicity of the proceedings that you have now detailed as having taken place at your office?

A. This occurred in the main larger room of my office. The doors were shut, and the seven or eight gentlemen that I have spoken of were present.

Q. Were the doors locked?

A. I do not think so; the doors were shut, because of the fact that we were there in conference, and did not

(Testimony of Thomas C. Marshall.)

want to be interrupted. It was in business hours, and in broad open daylight, and people were coming or going, and I do not know but some men came and spoke to me during the progress of this conference. I don't think either of the doors were locked, the two doors of the room were both shut, and I know that one of them was not locked because there is not any way to lock it. The outside door could be locked, but whether it was locked on that occasion, I do not know.

Q. Now, Colonel, in the course of the testimony given by Mr. Griswold concerning this settlement, he told us that five conditions were exacted of him as precedent to the payment to him of $1500 in settlement of his lawsuit; first, he was to surrender a certain contract he had with Mr. Cobban; second, he was to execute this affidavit; third, he was to surrender certain testimony, a copy of certain testimony taken before Mr. Zevely; fourth, he was to surrender certain papers in the same action pending in the District Court, and the fifth condition he did not detail to us. What have you to say as to the exaction of these conditions of Mr. Griswold as a condition of the payment of $1500?

A. There were no conditions exacted at the time that the matter was settled, or at any conference at which I was ever present. Mr. Griswold's original proposiiton was to accept the $1,500, and make this affidavit. I never heard of any conditions being exacted at all. Mr. Griswold's proposition, as I stated, was that if

(Testimony of Thomas C. Marshall.)

they would pay him $1,500 in settlement of this suit, he would make the affidavit which would be counter to the affidavit he had made at the instance of Mr. Zevely, and which he said was not true.

Q. Now, Colonel, now how long have you known this man, Griswold?

A. I have known him since he has been in the country. He first came on the Blackfoot several years ago.

Q. What opportunity, if any, did you have to form his acquaintance while he was living on the Blackfoot?

A. He has in the last five or six or seven or eight years frequently been in my office. I have done more or less business for him; that is, he came as the representative usually of some of my clients, and I have seen more or less of him all the time. The last year or two I have seen more of him, because his operations have been right in Missoula.

Q. Do you say that in those years he was frequently in Missoula? A. Yes, sir.

Q While he lived on the Blackfoot he was frequently at Missoula?

A. Very frequently at Missoula; yes, sir.

Q. Do you know what his reputation is in the community in which he lives for truth, honesty and veracity?

Mr. MAYNARD.—I object to the answering of that question for the reason that it appears already from the witness' examination that he has no such knowledge as

(Testimony of Thomas C. Marshall.)

the law requires to base any opinion as to the truth or veracity of any other citizen.

A. I know what his reputation is in the vicinity of Missoula at this time.

Mr. MAYNARD.—I object to any further questions on the subject, because it affirmatively appears from the answer of Colonel Marshall that his knowledge is limited to such reputation in regard to the point inquired about as has grown up since the institution of these suits.

Q. Where does Mr. Griswold live now, and how long has he lived there as far as you know?

A. He lives in Missoula at this time, and has been a resident there, I think, for the last three years; approximately three years.

Q. State what his general reputation is in the neighborhood in which he lives for truth, honesty, and integrity? A. Well, he is bad.

Cross-examination.

(By Mr. MAYNARD.)

Q. Were you attorney for Mr. Cobban from the time that the suit was commenced by Mr. Griswold?

A. No, sir; I went into the case later. Mr. Howell and Mr. Hershey first represented Mr. Cobban.

Q. Do you know when the suit was commenced by Mr. Griswold in the District Court in Missoula?

A. No, I don't recall now the date that the complaint was filed; it was before I went into the case, some time, though. There had been an answer. Mr. Hershey and

(Testimony of Thomas C. Marshall.)

Mr. Howell had appeared in the case as representing Mr. Cobban.

Q. Mr. Hershey is the same Mr. Elmer E. Hershey who is now a government official, namely the register of the United States land office at Missoula, is he not?

A. And was then.

Q. He was acting both as receiver of the land office—

A. He was register.

Q. Register of the land office and attorney for Mr. Cobban?

A. He was practicing law and always has practiced in the last number of years in Missoula, yes, sir.

Q. What are Mr. Howell's initials?

A. E. B., I think.

Q. He is now living in Butte?

A. I think his family is living in Missoula; he is practicing law here.

Q. Were you substituted, was your firm substituted as attorneys for the defense, or did they continue?

A. I think we replaced Mr. Hershey. Mr. Howell continued in the case with us, is my recollection.

Q. And your firm name is Marshall & Stiff?

A. Yes, sir.

Q. Do you know when you became connected with the defense?

A. No, I don't remember; it was shortly, two or three months before the compromise was affected.

Q. The compromise was effected how long after the

(Testimony of Thomas C. Marshall.)

date of this affidavit, being the Defendant's Exhibit "E"?

A. It was affected at the time that that affidavit was made.

Q. That same day?

A. Yes, sir; and at the same conference.

Q. That would be the 12th day of June, 1901?

A. Yes, sir. At the term of Court at which we went into the case; the case was continued for that term. We got leave to file, I think, an amended answer, but we first got leave to file an objection to the complaint, which the Court permitted us to draw, and we filed the amended answer, and at the next term of Court it was referred to Mr. Murray to take the proof.

Q. Had there any testimony been taken by Mr. Murray previous to this date?

A. Yes, sir.

Q. How long before?

A. Well, perhaps,we had not taken any testimony within the three days before this compromise was affected; we had been one or two days engaged in taking testimony, and I think a recess was taken, and it was perhaps before we resumed taking testimony after the recess that this compromise was affected.

Q. And the recess was two or three days, you say?

A. Well, I don't know whether it was that long or not; perhaps we took a recess from Saturday till Tuesday; I don't remember as to that; it was a recess of some duration, however.

(Testimony of Thomas C. Marshall.)

Q. For what purpose was the recess taken?

A. To suit the convenience of the parties. I don't remember at whose instance; perhaps the referee himself, or may be at my suggestion or someone's else. Because of the fact that it did suit the convenience of the proceedings to adjourn it temporarily, it was adjourned; I don't know what somebody may have had to do.

Q. Is it not true that while the parties were engaged in the taking of testimony, the recess or adjournment of the taking of testimony, was had for the sole purpose of commencing and carrying on these negotiations for a settlement?

A. No; the negotiations for a settlement, I am quite sure, were begun during a recess or intermission in the taking of testimony. It may be that they did not resume the taking of testimony at the time fixed, but may have postponed it then by reason of the fact that negotiations were pending; I am not sure but that is so, that when the time came to resume, we referred it to Murray that there were negotiations pending, and a longer recess was taken for that reason.

Q. Had Mr. Griswold been sworn?

A. Yes, and he had testified at some length?

Q. Had the plaintiff rested his case?

A. I am not quite sure; I am rather inclined to think he had.

Q. What would you say as to whether or not the defendant had given testimony?

A. I don't think he had. Perhaps we had put the

(Testimony of Thomas C. Marshall.)

defendant on the stand, and he may have been the witness on the stand at the time the recess was taken; my best recollection is that that is the fact.

Q. That he had given no testimony?

A. I expect that the defendant had given some testimony and had not concluded his testimony; I do not remember whether he had or had not given any testimony?

Q. But are you certain that he had not concluded his testimony?

A. I am not quite sure he had not concluded his testimony.

Q. Then the plaintiff had undoubtedly rested his case if it be true that Mr. Cobban had been called in the defense?

A. He certainly had, and my recollection is that he had, though my recollection may be at fault.

Q. How much did the plaintiff, Mr. Griswold, claim as due him?

A. Several thousand dollars; I do not just exactly remember the amount.

Q. Will you allow me to refresh your recollection; wasn't it between $3,200 and $3,500?

A. I think it was between three and four thousand dollars; yes, sir.

Q. And while the lawsuit was in the position you have now named, it was settled and ended by the defendant, Cobban, paying Mr. Griswold how much money? A. Fifteen hundred dollars.

(Testimony of Thomas C. Marshall.)

Q. Even?

A. That is my recollection. It was developed in the progress of the trial that there was some work that Griswold had done for Cobban that Cobban was perhaps under the impression had eben done by somebody else, and that Griswold was really entitled to consideration for it. Those matters were taken into account, to determine whether we would accept the proposition made by Griswold for a compromise.

Q. So, then, if, as a matter of fact Mr. Griswold in his sworn testimony claimed that there was due him from Mr. Cobban in the neighborhood of $3,300, $3,400, he received substantially one-half of his claim in settlement? A. Well, he received $1,500.

Q. Now, who conducted the taking of the testimony of the plaintiff and defendant?

A. Mr. Draffin.

Q. For the plaintiff, Griswold?

A. For the plaintiff, Griswold, and myself, and I think Mr. Howell was present for Mr. Cobban. I cross-examined Griswold myself.

Q. You knew, Colonel, did you not, at the time this settlement was made, that Mr. Inspector Zevely of the United States Interior Department had been in Missoula investigating the matters connected with this lawsuit? A. I had understood so.

Q. Had you met him?

A. Yes, I think so. I don't remember that he ever

(Testimony of Thomas C. Marshall.)

made a visit there that I did not meet him when I was at home; I think I met him more than once there.

Q. When was he there the last time prior to this settlement?

A. Well, I don't know; I think it had been several months.

Q. You are not positive as to date?

A. No, I don't remember.

Q. You had heard, had you not, that he had reported to his Department that gross fraud and crime had been committed, in his judgment, against the laws of the United States in this matter?

A. No, I don't remember that I had had heard what his report was. I had heard that he had been down there, and that Griswold had made an affidavit at his instance, and that he had taken the affidavit, but I don't know what he reported; I don't know at that time that I had ever heard what he had reported.

Q. Well, you knew, did you not, Colonel, that Mr. Zevely had not only taken the affidavit of Mr. Griswold, but that while he was in Missoula, before the Court stenographer, he had also taken the testimony of other persons?

A. I heard that Zevely had been there and had taken the affidavit of Griswold and a number of other people, that he had been up the Blackfoot; I wasn't there when he did that. I did hear about his going before the Court stenographer, no.

Q. The Grand Jury of the United States for the

(Testimony of Thomas C. Marshall.)

District of Montana was in session in the city of Helena at this very time, was it not?

A. I don't know; I don't know whether it was or not. The Grand Jury was in session shortly after that, I do know; but whether it was at that time or not, I do not know.

Q. You mean shortly thereafter, two or three days thereafter?

A. No, I don't mean two or three days; I know they were in session in June, the last of June; I do not know when they convened.

Q. You knew as a matter of fact that the Grand Jury had been called?

A. No, I did not know that. I did not know that these matters were to come before the Grand Jury then; I did not know whether an application had been made or an order of the Court had been made, an order calling the Grand Jury or not. I took it for granted, however, that Zevely had been down there looking into the matter, that it was not improbable that the matter would be brought to the attention of the Grand Jury, but I did not know how soon; I did not know when the Grand Jury would convene.

Q. You know as a matter of fact that the matter was called to the attention of the Grand Jury that very month of June, do you not? A. Yes, sir; I do.

Q. And that as the result of the examination and investigation had before the Grand Jury, your client—Mr. Cobban—that eleven indictments for subornation

(Testimony of Thomas C. Marshall.)

of perjury were returned to the Court by this Federal Grand Jury in and about this matter that we are now considering?

A. I know that the matter was brought to the attention of the Grand Jury, and that they returned indictments, I think, on the 27th of June, against Mr. Cobban.

Q. For subornation of perjury?

A. Yes, sir; charging him with subornation of perjury.

Q. Eleven indictments?

A. I think so. That is my recollection.

Q. And that six indictments for subornation of perjury were returned against Major Catlin?

A. That is my recollection, yes, sir.

Q. And that some fifty or more—you know exactly, don't you, how many indictments were returned against them for perjury?

A. Well, I think they said altogether, counting the eleven against Mr. Cobban and the six against Mr. Catlin, that there were one hundred and two indictments; I am not sure that that is right, but there were a great many.

Q. As you say, counting the several indictments against Cobban and Catlin, there were one hundred and two indictments returned by the Grand Jury?

A. That is my recollection.

Q. The rest of the indictments were for perjury committed by the entrymen and entrywomen that had

(Testimony of Thomas C. Marshall.)

entered land under the Stone and Timber Act, either directly or indirectly under Mr. Griswold's supervision?

A. That was what the indictments charged.

Q. And the lands were subsequently conveyed to Mr. Cobban by these entrymen and entrywomen and are the same lands that were afterwards conveyed by him to the defendant in this case?

A. I don't know anything about that; I only know what the indictments charge.

Q. And you are now, your firm, Marshall & Stiff, are the attorneys for Mr. Cobban and Mr. Catlin in these criminal proceedings?

A. We appear for those gentlemen.

Q. And for all the entrymen and all the entrywomen that were indicted?

A. We appear for Mr. Cobban and Major Catlin and for a great many of the entrymen and entrywomen as you call them; I do not know whether we appear for all or not, but for very many of them. There was one of them that was indicted that we do not appear for, and that is Mr. Griswold himself.

Q. Well, the Government appears for him?

A. So I understand.

Q. And associated with you in the trial of these criminal matters is Mr. Walsh? A. Yes, sir.

Q. Who is one of the solicitors for the defendant in this case?

A. Yes, sir, that is correct.

(Testimony of Thomas C. Marshall.)

Q. Now, Colonel, I wish you would just tell me again how it was that this suit came to an end as it did?

A. Well, sir, it came to my attention that Griswold had submitted a proposition to settle this controversy.

Q. Now, just wait a minute. You say that Mr. Howell was associated with you? A. Yes, sir.

Q. He was living at that time in Missoula?

A. I think so, yes, sir.

Q. And he had been one of the original attorneys for Mr. Cobban in this civil suit?

A. He had been in the case previous to my coming into it, yes, sir.

Q. Now, is it not true that you were acting more in the capacity of counsel than as an attorney in the case?

A. No, I was very much more active in the management of the case than anybody else, and practically assumed the management of it.

Q. After you got in?

A. After I got in; I didn't do anything before.

Q. What did Mr. Howell do?

A. Mr. Howell was with me, and conferred with me, and we discussed questions as they came up in the progress of the investigation, and I cross-examined the witness and asked him as many questions as I concluded perhaps that the situation required.

Q. I don't care anything about that. What was Mr. Hershey doing?

(Testimony of Thomas C. Marshall.)

A. Mr. Hershey was not with us in the case and never was in the case after I went in.

Q. Actively?

A. If he was passively I did not know it. My understanding was that he retired.

Q. Can you tell me who it was that first spoke to you about this settlement?

A. I know the man very well; he is a timber inspector. I don't know who he represents. If you will allow me, I can inquire from these gentlemen and get his name.

Q. Certainly.

The WITNESS.—What is his name, Mr. Bickford?

Mr. BICKFORD.—Sparks.

The WITNESS.—Sparks is the man.

(By Mr. MAYNARD.)

Q. William J. Sparks?

A. I don't know; he is a man named Sparks and he is at Missoula and has been there for some time. He came to me at my house during the noon recess.

The EXAMINER.—His name is William Sparks. There is no J.

Q. While the case was in progress?

A. Yes, sir.

Q. At what stage of the game?

A. While the case was being tried.

Q. The plaintiff's case was being tried?

(Testimony of Thomas C. Marshall.)

A. I think so; I think the plaintiff was then introducing his testimony. He professed to come by authority from Mr. Griswold. I do not know whether he had any authority or not, but he made a proposition of settlement.

Q. He came to your house, you say?

A. He came to my house and talked to me at my barn. I do not say that he came there for that purpose. He lives down that way and was going down towards the depot and I was at my barn and he came in there and talked to me and I told him that I did not know anything about any compromise or any proposition that Griswold might make, that I would submit it to Mr. Cobban and if he wanted to compromise with Griswold it was all right with me.

Q. Do you know who this William Sparks was?

A. I knew he was Sparks, a timber man there; I do not know him very well yet.

Q. Do you know who he was working for at the time?

A. No, nor do not yet; he professed at that time to be a friend of Griswold, and professed to come with a communication from Griswold. Whether he had any authority or not I do not know.

Q. What was this communication?

A. His proposition was that if Cobban would pay Griswold so much money that he would dismiss the suit as settled and that Griswold said that the affidavit that

(Testimony of Thomas C. Marshall.)

he had made for Zevely had been made under certain influences, and that there was not any truth in it, and that he was perfectly willing to make a counter-affidavit stating the facts.

Q. That was what Sparks said to you?

A. That is what Sparks said to me.

Q. In your barn? A. At my barn.

Q. And that was the first intimation that you had had from anybody that there was a proposition for a settlement to be made?

A. I think so. I do not know whether Draffin or any of them had ever talked to me about settling before that or not, but I think that was the first and only intimation of settlement that was ever made to me until it was suggested that the gentlemen had practically agreed and would meet at my office for the purpose of fixing the matter up; I did not have any other negotiations with it.

Q. You did not know who this Sparks was that met you, as you say, as he was coming along passing your house, excepting that he was a timber man?

A. I had seen Sparks, and see him every day; I never have had any transactions with him. I saw him at the courthouse during the entire progress of this investigation.

Q. You do not know who he was working for at the time or who he had been working for?

A. Nor I don't know now who he ever did work for in his life.

(Testimony of Thomas C. Marshall.)

Q. And you have no knowledge as to how he happened to be there except from what he told you?

A. He lived in Missoula, as I understood.

Q. I mean at your barn, except what he told you?

A. I don't know anything about why or at whose instance he came or anything else, except what he told me.

Q. Mr. Cobban or some of his friends may have sent him, may he not?

A. I say I don't know by what authority he came there except what he told me. Yes, he might have been sent by you for that matter; I don't know who sent him.

Q. How long was this before the 12th of June?

A. Well, I don't know; it was a day or two before the settlement was finally effected, or two or three days.

Q. What did you do next after receiving this communication?

A. I told Cobban what Sparks had told me.

Q. Then what?

A. That was as far as I knew, until I understood two or three days after that the gentlemen were to meet at my office for the purpose of affecting a compromise as had been agreed on.

Q. Then, Colonel, between the time of communicating this fact to your client, Mr. Cobban, and three days thereafter, when you were informed that the parties were to meet at your office for the purpose of affecting a settlement, you had nothing to do with it?

(Testimony of Thomas C. Marshall.)

A. Not a thing. I communicated to Mr. Cobban this proposition. Within two or three or four days after that I was told by either Mr. Cobban or Mr. Howell that they had arrived at an agreement with respect to it, and that they were going to meet at my office that afternoon and close the matter up. We met and did not close it up because the affidavit was not satisfactory to Mr. Draffin, and Mr. Griswold wanted time to revise it.

Q. During those three days, we will say, in which the negotiations for settlement were being carried on, and that you knew nothing about them, you know afterwards who did represent your client in the negotiations?

A. No, I never had any direct information; I understood he represented himself in his negotiations with Griswold.

Q. Represented himself?

A. I don't know whether that was so or not; that was my understanding. I did not.

Q. Your understanding was that Cobban represented himself?

A. Cobban and Griswold themselves settled the proposition. I don't know whether Cobban told me that, but that was the impression that I have always had about it from the situation at the time.

Q. Mr. Howell, who was also in the case as an attorney, might have been actively engaged in the negotiations, might he not?

A. Oh, he may have been; I say I do not know, be-

(Testimony of Thomas C. Marshall.)

cause we went on the afternoon of the day that Sparks came to me with this proposition—we took testimony I know that afternoon.

Q. So that the result of the negotiations was to be communicated to you at your office when the formal signatures would pass to what had already been accomplished?

A. No, when they told me about the meeting, they said that there had been an agreement effected, and that they would meet there for the purpose of closing it up.

Q. What do you mean by closing it up?

A. Well, agreeing on the disposition of the case, and the dismissal of it, and this affidavit that I understood Mr. Griswold was going to make, which was to be submitted to him there.

Q. Now, who were the persons at that first meeting at your office?

A. At the first meeting at the office was Draffin, Griswold and Howell and Stiff, and myself and Mr. Cobban.

Q. Now, you say at that time that an affidavit prepared for signature and execution was presented to Mr. Griswold? A. Yes, sir.

Q. Who presented it to him?

A. I don't know, perhaps Mr. Howell. It was brought there, I think, by Mr. Howell; it may have been given to Griswold and Draffin before I came there—I don't recall now. With respect to the first affidavit, they took it away with them.

(Testimony of Thomas C. Marshall.)

Q. And Mr. Griswold on being presented with it, what did he say?

A. He and Mr. Draffin looked it over as I remember, and Draffin said that Griswold could not make that affidavit, and it was after some discussion agreed that they should take it and revise it and submit it for the purpose of preparing an affidavit that Griswold could make.

Q. And at that time you say that Griswold said that he did not want to swear to anything but what was the truth?

A. I do not whether it was at that time or at the next meeting, but it was at one meeting.

Q. And you told him that you did not want him to answer to anything—

A. I told him I would not be a party to anything that involved him or anybody else swearing to anything that was not the truth.

Q. That meeting at your office did not last very long then? A. No, only a few minutes.

Q. Had you seen this affidavit that you say Mr. Howell might have prepared for Mr. Griswold to sign and execute previous to their coming to your office?

A. No, but I think I saw it perhaps previous to Griswold, and Draffin coming; I think Howell came first with the affidavit and I think I read it over before Draffin and Griswold came there—yes, I think I read it, before it was submitted to them a few min-

(Testimony of Thomas C. Marshall.)

utes. Howell came first and I read it over after he came, and before they came.

Q. And that affidavit was along the same lines of the one that he finally did swear to, only a great deal stronger?

A. Well, it had substantially what is in that affidavit and a great deal more. But it was a longer affidavit than that is.

Q. Didn't Mr. Draffin take this affidavit that Mr. Howell and you had prepared—

A. I did not say that Howell and myself prepared any affidavit.

Q. Well, you say Howell prepared it and brought it to you and read it over?

A. Yes.

Q. And acting as counsel for Mr. Cobban?

A. Yes.

Q. I dare say that is sufficient answer.

A. Well, all right; I have no objection to the association.

Q. When you two gentlemen presented that affidavit to Mr. Draffin and his client, Mr. Griswold, to consider it, after looking it over did not he right there in your presence take his pencil and draw it down on each of the pages and say that he would have nothing too with it?

A. No, sir, he did not.

Q. Didn't you see the original affidavit creased and cut in the way I have stated? A. Cut?

Q. Cut with pencil marks?

(Testimony of Thomas C. Marshall.)

A. No. I don't think so; I think he may have marked out some of it there.

Q. Didn't he cut out all of it?

A. No, he didn't; he simply said that Griswold couldn't make that affidavit, and after some discussion it was agreed that he take it and revise it and cut it down to where Griswold could make it.

Q. How long was he gone?

A. I don't think we met maybe until the next day; I am not sure, I think, perhaps, it was the next day before we met again. We did not meet that day in any event.

Q. Did you see them in the meantime?

A. Do you mean did I see Draffin?

Q. Yes, in regard to his matter?

A. No, sir, I did not have any conference with him, I don't think; I may have met him and may have mentioned it incidentally. I had no conference with him, or no discussion as to the matter at all.

Q. Now, then, you think it was the next afternoon that they came together in your office again?

A. I think so, yes, sir.

Q. And what took place there at that time?

A. Oh, the same people were there, with the addition of Major Duncan, who was Draffin's partner. They brought the affidavit, and Griswold stood up at the end of the table in my room and talked, in which he said that the statement—he repeated the statements in that affidavit. I don't say that he read it, but he repeated it; he said that that was the truth, and that he could consistently sub-

(Testimony of Thomas C. Marshall.)

scribe and swear to the affidavit, and repeated the proposition as I have suggested, and after some considerable discussion he did sign and swore to it before Mr. Stiff.

Q. What was the occasion of the considerable discussion?

A. Well, I don't know whether that was—those things are always discussed when people meet. Griswold, I think, wanted to put himself right. He was undertaking to explain his attitude, and state what the relationship between him and Cobban had been, and stated what his instructions from Cobban were from time to time, and repeated them independent of the affidavit, and we discussed it about what disposition we would make of the case. There was some question about whether it should be dismissed as settled, and there was a question whether we would let Griswold take a judgment against Cobban, and that they would immediately enter satisfaction of the judgment. There were many incidental questions discussed in relation to it, and I think that they insisted and wanted to take a judgment and have judgment entered, and then enter satisfaction.

Q. But the main point of discussion was as to how to phrase this language relative to Cobban's work in taking up these lands, was it not?

A. That had been written and brought by Draffin and Griswold to the conference, and Griswold was ready all the time to sign that affidavit and swear to it after he got there. The discussion was with respect to these other

(Testimony of Thomas C. Marshall.)

questions and Griswold's disposition to make the settlement.

Q. Wasn't it true, Colonel, that there at that time when you say that Griswold said that he did not want to swear to anything but what was the truth, and this was presented to him for his signature as a condition precedent to the settlement of the case and his getting his money, that Mr. Griswold was hesitating about the language of that affidavit?

A. He never manifested the slightest reluctance. He stood up and had the paper in his hand, and while he was talking, and while we were discussing the proposition, and he sat down and took the pen and wrote his name. He never objected to a syllable in it, because he and Draffin had gone over it and had revised it before they came.

Q. But they had taken the former affidavit home with them, which they had to revise, because it was not true, and at the time that this affidavit was made by Mr. Draffin, didn't he say there in the meeting that Mr. Griswold's affidavit was simply the expression of a legal opinion as to the question of the violation of the law, and as to the legal quality of what makes a contract?

A. No, he didn't. Griswold himself stated the facts, and he signed the affidavit. The affidavit that was brought there the day before, Draffin said that Griswold could not make, but he did not say for what reason.

Q. Mr. Draffin, as an honorable man and as an attorney, was determined that he would not allow his client to swear to anything but what was the truth?

(Testimony of Thomas C. Marshall.)

A. I think so; I don't think Draffin wanted him to swear to anything that was not so, and I know that I did not, and I don't think that anybody there did.

Q. And Mr. Griswold expressed himself an unwillingness to swear to anything that was not the truth?

A. He said that he did not want to swear to anything that was not true.

Q. And that when it came down to this language—

A. And when he signed and swore to the other affidavit he said it was true, not only by his oath, but expressed it in words.

Q. "And that the instructions of said Cobban to this affiant while in his employ were always to the effect that no contract for the purchase of timber and stone claims should in any place be made prior to final proof [illegible]reon in the United States land office"?

A. He said that he could truthfully make that statement.

Q. That he could truthfully make that statement on the theory that there had been no written contract?

A. He never said anything about theory.

Q. Nothing signed or sealed or delivered, or anything which would in law amount to a legal contract?

A. He never said anything like that; he never said a word about theory. He said that that was the fact, that Cobban had instructed him not to make any contract. Whether he told the truth about it or not, I do not know, but that is exactly what he said.

Q. Very well, but that he could say and justify him-

(Testimony of Thomas C. Marshall.)

self in saying that no contract had been made between himself and the entryman when he would say to the entryman, "Now, you understand that there is no contract or agreement in this case; we can't have any such contracts or agreements because it is against the law, but we won't have any understanding, you understand; but when you make your final proof, we expect that you will go to Mr. Cobban's office, and when you have conveyed there, I will tell you that you will get one hundred dollars." Now, then, if that was the fact, and wasn't that stated at the time, substantially that, possibly in the law might not be a contract which would enable him to make this affidavit?

A. Not one single word of it; not one single word.

Q. Now, then, as a matter of fact, Colonel, this original contract that had been made between Mr. Cobban and Mr. Griswold was delivered up to Mr. Cobban, was it not?

A. Cobban had it; it was not delivered there; it may have been delivered before or after.

Q. During the three days' negotiations that you know nothing about?

A. Yes, I say that Cobban had the contract; I saw him have it, but when he got it, or where he got it, I do not know.

Q. You got this affidavit; that is two things that you got?

A. That is what we got, yes; we got the affidavit; I don't know anything about getting the original contract?

Q. Cobban has got the contract to your knowledge?

A. Cobban had it; I don't know where it is now.

(Testimony of Thomas C. Marshall.)

Q. And you got the contract? A. Yes.

Q. And the third thing, you got the stipulation from the parties, did you not, and entered into a stipulation discontinuing the suit? A. Yes.

Q. Now, then, was that an ordinary stipulation?

A. The suit was to be disposed of?

Q. Was that an ordinary stipulation that was made between counsel for the settlement of a suit of that character?

A. I don't know anything extraordinay about it.

Q. Was there not embraced in that stipulation substantially that the record, that the files, etc., might be removed and taken out of the clerk's office?

Mr. WALSH.—Objected to. The stipulation itself is the best evidence.

A. I don't remember; it may be so. I know there was something said about withdrawing papers, a number of checks and things of that sort that had been introduced in evidence. It was discussed there that they were matters of records, and books, that it was necessary for the parties to have, and we may have provided that they might be withdrawn, and I think we did. I will take occasion to state, however, that there was nothing extraordinary about that; I have frequently made written stipulations in which the parties agreed to withdraw their exhibits or papers that had been introduced in evidence.

Q. But it was a stipulation other than a simple stipulation to discontinue the suit?

(Testimony of Thomas C. Marshall.)

A. It was; there was that provision for withdrawing papers that had been introduced and filed.

Q. Wasn't there something, also, said in your presence, and in your hearing, in substance to the effect that Mr. Draffin and Mr. Duncan and Mr. Griswold was to get from Mr. Zeverly the affidavit which Mr. Griswold made before Mr. Inspector Zeveley, in which he had sworn to certain things in connection with this matter?

A. No.

Q. There was not anything said about that?

A. Nothing said about getting an affidavit from Zeverly.

Q. Not getting an affidavit, but getting the affidavit which he had made?

A. Nothing about getting the affidavit; there was something said about their producing a copy, that we might know what Griswold had said in the affidavit made by him, but there was nothing said about getting the affidavit that he had made, and that Mr. Zevely had taken, but I think that Mr. Griswold or someone else had a copy of it, and something was said about their showing it to us, and maybe they did.

Q. Don't you know whether they did or not?

A. No. I know they did not show it to me; they may have showed it to someone else.

Q. Did you see it?

A. I never did see it, no, sir; that is, I don't recollect of ever seeing it; I don't recall now that I did.

Q. Now, then, Colonel, this suit, as far as its discon-

(Testimony of Thomas C. Marshall.)

tinuance at that time on the 12th of June, 1901, and the payment by Cobban to Griswold of fifteen hundred dollars in cash, and getting this affidavit, making this stipulation with the conditions that are in it, the offer to get the copy of the affidavit that he had made with Mr. Zevely, and one or two other conditions which I may have overlooked which my brother Walsh mentioned, all of that was done without any reference whatever to the prospective investigation of this whole subject matter by the Federal Grand Jury?

A. I do not know what may have influenced Mr. Cobban; it was done without any discussion of the prospective investigation before the Federal Grand Jury, and it never was a condition of the settlement, or the stipulation did not provide for anything, or that he should get this copy of the Zevely affidavit. The proposition, as I understood it, for the settlement was, that he would settle the controversy that he had against Cobban for $1500, and that he would make an affidavit that would state the truth with respect to this matter, which would be in contradiction of the affidavit he had heretofore made for Zevely. After he made that, and for the purpose of determining how we would dispose of the case, we agreed—not Griswold and Cobban, but the counsel agreed that we would defer a stipulation in this way, and I do not know that Griswold or Cobban had anything to do with the proposition about the Zevely affidavit, but it was discussed there that he would get a copy, or, perhaps, had a copy, and he would let us see it. What may have influenced Mr. Cob-

(Testimony of Thomas C. Marshall.)

ban, I do not know, but nothing was said in the discussion about the prospective investigation before anybody or anywhere.

Q. If nothing was said in the discussion, did you not know at the time that this matter was to be brought in a few days before the Grand Jury that was then in session?

A. I thought it quite probable from the information that I had; I thought it very probable that the matter would be brought to the attention of the next United States Grand Jury that would be convened.

Q. Now, did you not know at that time, as attorney for Mr. Cobban, whose conduct in this very matter would be investigated at the next session of the Grand Jury—did you not know as his attorney that, by Mr. Griswold delivering up the contract, and especially by making this affidavit exonerating substantially Mr. Cobban from any complicity or attempt to violate the Federal laws, that would greatly aid him in case the matter should be investigated; did you not know that?

A. No, I did not know to what extent Mr. Cobban was involved at all; on his assurances I did not think that he was involved at all. Griswold had plead in his complaint substantially the substance of his contract that he had verified, and that was accomplished, and that we could not withdraw, and I did not believe the Grand Jury would believe Griswold if he went before them and testified, if he testified according to that affidavit that Zevely had framed as I understood.

Q. Is that the best answer that you can give as a

(Testimony of Thomas C. Marshall.)

lawyer and as a man of profound experience as to a matter affecting your client?

A. Well, I knew that if Griswold made affidavits that were contrary it would impeach him?

Q. And you were exceedingly anxious to get that affidavit?

A. I was not anxious to get the affidavit. I wanted to go on with the case and expose Griswold before the people of that community, which I was confident I could do, and personally I was rather opposed to the compromise.

Q. But the making of these opposing affidavits would be very great help to your client and you were not adverse to getting it?

A. I expected this investigation would involve not only Mr. Cobban, but many other people, and I was not averse for that reason; no, sir, that is right.

Q. And your attempt to get the affidavit you made it so strong that they absolutely would have nothing whatever to do with it when it was first presented?

A. I did not have anything to do with the preparation of that affidavit.

Q. Well, I mean your associate?

A. It was made so strong that Draffin said that Griswold would not make it, but that was all; he did not say that he would not have anything to do with it, because that he did take it and revise it and fix it up so that Griswold was willing to swear to it.

(Testimony of Thomas C. Marshall.)

Q. They took it and modified it over to such a point that they could—

A. As Griswold stated it there they took it and fixed it so that it would state the truth, and that Griswold was willing to testify to the truth on that particular occasion.

Q. Now, then, as a matter of fact, Colonel, that affidavit came before the settlement, didn't it, before the discontinuance of the case?

A. Well, it was there and was signed at the time the statement was made.

Q. It was prior to it, wasn't it?

A. In actual time I expect it was, perhaps a few minutes before the money was paid, but I do not know that it was prior.

Q. Wasn't it a condition precedent?

A. That was the proposition as I understood it, that Griswold made, and that was accepted, that he would take $1500, and make this affidavit. It was one proposition, and one proposition that was accepted.

Q. Now, then, it was a condition precedent, but all you know as to whether or not it came in the first instance of a proposition moving from Mr. Griswold, was the chance conversation that you had with Mr. William Sparks in your barn?

A. Yes, that was all I did know about it, was hearsay. I know it was not a condition precedent as I understood it, when Sparks communicated to me the fact that this was the proposition that Griswold had made,

(Testimony of Thomas C. Marshall.)

and I understand that it was the proposition that Griswold made to Cobban and that was accepted. Griswold never made any proposition to me at all.

Q. Now, Colonel, you have been engaged actively in the business of your life in Missoula for the last fifteen years, have you not?

A. Nearly nineteen; it will be nineteen years in May.

Q. In Missoula? A. Yes, sir.

Q. And Mr. Griswold has not been a citizen of your City of Missoula but a comparatively very short time?

A. Yes, sir, that is correct.

Q. And he is engaged in running a small retail grocery store at a considerable distance from your home, is he not?

A. No, he is on my street, about a quarter of a mile perhaps west of me. He and I both live on Spruce street.

Q. He lives at one end and you live at the other?

A. No, we both live on West Spruce.

Q. Isn't it the longest quarter of a mile in Missoula?

A. Well, it is about a quarter of a mile. We don't neighbor.

Q. Well, I have been by both of your houses, and I should think that is the longest quarter of a mile that I know, even in Montana?

A. Well, I don't know; it would not be half a mile I am quite sure, and I doubt whether it is over a quarter of a mile. I live just by the Catholic Church,

(Testimony of Thomas C. Marshall.)

and he lives just west of the Bitterroot railroad track on the same street.

Q. You say you don't neighbor? A. No.

Q. You are a lawyer engaged in your business?

A. Yes, sir.

Q. And he is engaged in a business entirely disconnected from yours?

A. Yes. I don't trade with him either.

Q. Now, then, have you ever had any personal dealings with him yourself of an unpleasant character?

A. No, sir, never. Griswold and myself have always gotten along. We always speak. I have fixed up more or less papers for him when he came, as he said, at the instance of other people, he would come to my office and I have done many things for him.

Q. That was when he was living at the Blackfoot?

A. Yes, sir. I do not know that I have done much for him since he came to Missoula to live, but in one or two instances, but there has never been any unpleasant personal intercourse.

Q. And you have engaged in business matters with him, he coming as the representative of other parties?

A. I think so.

Q. In all of your business relations with Mr. Griswold, please state, if you ever once saw anything of a dishonorable or a dishonest nature or character in and about those business negotiations?

Mr. WALSH.—Objected to as not proper cross-exam-

(Testimony of Thomas C. Marshall.)

ination and as utterly aside from the question of general reputation.

A. No, not so far as my personal relations with Mr. Griswold are concerned.

Q. Well, when he came to your office as the representative of large interests, and you were drawing papers for them, did he in anyway as far as you ever knew or discovered do anything that seemed to betray those interests in the slightest degree?

A. Oh, he never had any occasion to; he would come to my office and say that somebody sent him there to have a deed written or somebody sent him there to have a mortgage, he had a mortgage drawn for a man named Mickels. I never had any transactions where he could have betrayed or been guilty of misconduct, he simply came and asked me to draw a paper, a chattel mortgage or deed or something of that kind for somebody else, and I would do it.

Q. Previous to Mr. Griswold's moving to Missoula, his home was up in the Blackfoot country, was it not?

A. Yes, sir.

Q. That was some 40 miles from Missoula?

A. Yes. I only knew him casually there. He came to Missoula at times.

Q. So that your entire knowledge of Mr. Griswold and your knowledge of his reputation is gained from such knowledge as you may have acquired during his short residence in Missoula?

(Testimony of Thomas C. Marshall.)

A. I think so; I don't know that I ever heard Griswold discussed until after he came to Missoula to live.

Q. Now, then, this suit that he brought against your client, Mr. Cobban, was commenced by the filing of a complaint, I think, in the year 1900?

A. Yes, sir.

Q. And he had lived but a short time in Missoula before that suit was commenced?

A. I think so; that is my recollection.

Q. Now, state what you have heard from anybody about the reputation of Mr. Griswold for truth, honesty and integrity prior to the commencement of this suit against your client, Mr. Cobban?

A. Well, I don't know that I have ever heard his reputation for truth and veracity discussed before that time. I am not prepared to say that I did. I have heard it very much discussed since that time.

Redirect Examination.

(By Mr. WALSH.)

Q. Who is the receiver of the general land office at Missoula, Colonel Marshall?

A. William Q. Ranft.

Q. Do you know what his profession is?

A. He is a lawyer.

Q. Do you know whether he has practiced his profession at all since he went into the office of receiver?

A. Yes, he did to some extent. He was my law partner when he was appointed receiver, and the relation-

(Testimony of Thomas C. Marshall.)

ship continued a while after he went into the office; it continued until I had some offers made to take some business in the land office, and as soon as that occurred he withdrew from the partnership.

Q. Now, do you know of any other instance, Colonel, in which the officers of the land office being attorneys, had practiced at the bar of your Courts there?

A. Well, these two gentlemen are the only two lawyers that I recall that have been register and receiver respectively of the land office there.

Mr. BICKFORD.—John Evans was.

The WITNESS.—Yes he was, that is so.

(By Mr. WALSH.)

Q. Mr. Evans was one of the officers?

A. Yes, sir, at one time he was register of the land office; I don't know what he did as to that.

Q. You don't know whether he practiced or not?

A. No, I never came in contact with him.

Q. Now, you told us that in the course of the investigation, it appeared that some work had been done by Mr. Griswold which Mr. Cobban thought had been done by other parties, and for which he was not entitled to credit, and for that reason you believed that Griswold was entitled to something?

A. I said so.

Q. Let me ask you for the purpose of refreshing your memory, whether the sum claimed by Griswold

(Testimony of Thomas C. Marshall.)

was not practically $3,400, which appears to have been testified to here on this investigation—

A. It was between three and four thousand dollars, I think.

Mr. MAYNARD.—We will agree that the amount named was $3,400.

Mr. WALSH.—Very well we will be glad to do that.

Q. I wish you would state whether it was likewise disclosed in the investigation that any payment had been made upon this amount by Mr. Cobban for which he has received any credit by Mr. Griswold?

A. Yes, there were very many. Griswold's method of keeping books was very unique. In one instance Griswold had been given by Cobban $110 to go down to Oregon on some business, a joint enterprise—

Mr. MAYNARD.—I object to that as immaterial and irrelevant and incompetent as not redirect examination or as direct examination, and move to strike it out, and object to any questions and answers on this subject matter.

The EXAMINER.—Finish your answer.

The WITNESS.—Mr. Cobban had given Griswold $110, and Griswold did not credit Cobban with $110 when he gave it to him. The expenses of the trip were $90, and he charged Cobban with the $90. Another instance was where Griswold had gotten $20, from Jakways & Faust, and Cobban had paid it. Griswold did

(Testimony of Thomas C. Marshall.)

not credit Cobban with the $20, paid for him, but charged Cobban with $20, that he had paid for him. There were several instances in which Cobban had given Griswold checks to pay for certain things. Griswold, without crediting the checks, used them in the way that was proposed, by charging Cobban as if it had been paid out of his own money. There were many instances of that kind; all these things disclosed themselves in the cross-examination of Griswold.

Q. In the course of your investigation, did you not as a matter of fact present a number of these checks to Mr. Griswold, for which no credit had been allowed at all?

A. Quite a number of them, yes, sir.

Q. Do you recall about how much those checks aggregated which were presented to Mr. Griswold and acknowledged by him, and for which he had not credited Mr. Cobban?

A. No, there were several hundred dollars though, and they were very strenuously opposed on the cross-examination, but later Griswold and Draffin themselves came in and conceded that they were wrong, and that Cobban was entitled to credit for them.

Q. Now, you told us, Colonel, that you had in mind at the time that this settlement was made that possibly the matters might receive the attention of the Federal Grand Jury. I wish you would state whether you have had any conversation with Mr. Draffin that might have given you the impression you had as you state?

(Testimony of Thomas C. Marshall.)

A. Yes, I have talked with Draffin. Draffin has been in my office, talkin about the Cobban and Griswold case, in fact, before I went into the case, and he told me some things that he had done, and intimated that the matter would be brought to the attention of the Federal Grand Jury.

Q. Now, you were also asked by counsel whether you did not know that eleven indictments had been returned against your client, Mr. Cobban, and others against Mr. Catlin, some 102 indictments returned altogether by the Federal Grand Jury against these gentlemen and the entrymen and entrywomen. I wish you would state also, Colonel, whether you do not know that pleas in abatement were filed by the defendants in all of those cases, charging that the indictment had been improperly returned by the Grand Jury, owing to improper influences exercised on them by the counsel who questioned you?

A. I do know that the pleas were filed, and on the hearing I thought that they were sustained by the proof; that was my judgment.

Q. Who is Major Duncan that you refer to?

A. Major Duncan is the partner of Draffin, the law firm is Duncan & Draffin.

Q. Where does his military title come from?

A. I think he originally got it as an instructor in military tactics at the University of Virginia, perhaps, and then he went into the Spanish-American War as a captain and came out as a major.

(Testimony of Thomas C. Marshall.)

Q. Can you tell us, Colonel, whose handwriting this is in the body of the affidavit, Exhibit "E"?

A. No, I do not know the writing; I understood it was Mr. Howell, but I am not acquainted with his handwriting. I know Mr. Stiff's writing, and I saw Griswold sign his name. I know Mr. Draffin's handwriting, and I do not think it is his writing; it may be, but I do not think it is.

Q. You do not enter into stipulations in your county which permit you to withdraw pleadings from the files of the Court, do you?

A. I do not know of any of that kind—yes, I have done that. I filed an answer and I wanted to substitute another answer, and I was permitted by stipulation to withdraw it, and refile it as corrected.

Q. Does the clerk permit you to withdraw pleadings from the file?

A. No, sir, we had to do that in open court; they would not permit that.

Q. I think you spoke about a certain occasion on which Mr. Griswold procured your services in connection with some transaction that one Mickels was connected with in some way?

A. Yes, Mickels owed him, and Griswold had a chattel mortgage on some of his property, and I had to renew it once or twice for him, and perhaps have the sheriff go out and take possession of the property, I think.

Q. Do you recall, Colonel, what constituted the

(Testimony of Thomas C. Marshall.)

substantial difference between the affidavit originally prepared and this affidavit, Exhibit "E"?

A. I think it recited at some length the fact—

Mr. MAYNARD.—I object to the testimony and to the question as asked for the reason that the best evidence of the matter inquired about is the original affidavit itself or the original proposed affidavit, and that no showing has been made as to its loss or destruction, and that until such showing has been made it is incompetent for counsel to inquire of the witness as to the contents of the first affidavit?

A. My recollection is that it recited at considerable length the relationship that had existed between Cobban and Griswold, and also referred possibly to the fact that Griswold had heretofore made an affidavit, and I do not know that I recall the substantial features that was objected to, or the feature that was more particularly objected to.

Recross-examination.

(By Mr. MAYNARD.)

Q. That affidavit was in the handwriting of Mr. Howell, was it not?

A. I do not know Mr. Howell's handwriting, but I understood that it had been prepared by him.

Q. You understood that this affidavit was prepared by Mr. Howell, did you not?

A. That has been my impression, but I do not know

(Testimony of Thomas C. Marshall.)

how I came by it; I do not know whether my impression is correct or not.

Mr. MAYNARD.—We will stipulate that the testimony may be received as if signed by Colonel Marshall, under the certificate of the Master that it has been correctly transcribed.

Whereupon a recess was taken until 2 P. M.

I do hereby certify that I have read and carefully corrected the testimony of the witness, Thomas C. Marshall, and that the same has been correctly transcribed.

HENRY N. BLAKE,
Examiner.

Tuesday, April 15th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

D. V. BEAN, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. T. J. WALSH.)

Q. Mr. Bean, where do you reside?

A. I reside in Hamilton, sir.

Q. That is in Ravalli County, is it?

A. Ravalli County, Montana, yes, sir.

Q. It was formerly a portion of Missoula County, I believe?

A. I think so; I don't know anything about it, though, because I was not here then.

(Testimony of D. V. Bean.)

Q. How long have you lived there, Mr. Bean?

A. I have been here in Montana about seven years, sir.

Q. What is your answer?

A. It is about seven years since I first came to Montana, I think it was just seven years ago this month that I first went to Hamilton.

Q. Was that the time when you first came to the State of Montana?

A. Well, I have been in Montana, east and west, say for three years before that, but I came there at that time on an appointment from Mr. Daly, and met him there in April.

Q. Where did you reside before you came to Montana, Mr. Bean? A. In Wisconsin.

Q. At what point?

A. Stevens Point, right in the center of the State.

Q. What is your business, Mr. Bean?

A. Lumberman.

Q. How long have you followed the business of lumberman, Mr. Bean?

A. Ever since I was fifteen years old, as you might say, ever since I was a boy.

Q. In this State and in the State of Wisconsin?

A. Yes, sir, in this State and in Wisconsin. Well, I did do some lumber business in Colorado.

Q. What is the character of the work that you have done in connection with the lumber business?

A. All kinds, logging and selling lumber and manu-

(Testimony of D. V. Bean.)

facturing lumber, but principally up in the Bitterroot. I was logging and estimating timber, what they call a cruiser.

Q. Now, I wish you would tell us what the duties of a cruiser are as understood in this country?

A. The duties of a cruiser, sir, is to go and look up timber and stake it off and calculate on the amount there is on it per acre, and estimate it in that way. Say, suppose this room is an acre, we will stake it off, that is, practically stake it off, so that—and mark the trees on it; we will estimate what timber there is on it, find out how many thousand feet there is to an acre. We look over these lots or claims of about a hundred and sixty acres, and see if there is an average amount of timber on it, and then we can form an estimate and come to a conclusion pretty close, as to what amount of timber there is on the 160 acres.

Q. Do you know one Chauncey L. Griswold?

A. Yes, sir, I know him well.

Q. When did you first become acquainted with him?

A. I met Chauncey Griswold, a little over seven years ago in Helena.

Q. In Helena, did you say?

A. In Helena, yes, sir.

Q. And from what extent have you been acquainted with him since, Mr. Bean?

A. Well, I will tell you: Take it from any State, you may say, from the same country, and when you meet a man that you have known, you get kind of clanish, and

(Testimony of D. V. Bean.)

Chauncey was from Wisconsin, and I met him over there, and found out that he was from Wisconsin, and he had got no work to do, and I had a chance to give him a little job, and I done it. I took him up on a cruise in the Blackfoot country, him and his brother.

Q. So that at that time you were intimately acquainted with him?

A. Yes, I became intimately acquainted with him, as intimately as I wanted to.

Q. And has your clanishness continued uninterrupted since then, or have you know him less since then?

A. I have known him well ever since then.

Q. Did you ever have occasion to become familiar with him? A. Yes, sir.

Q. And met him frequently during that time, during the time that you have known him?

A. Yes, sir.

Q. I wish you would state whether you often met him during the times that you were acquainted with him?

A. Yes, sir, from the time that Mr. Griswold started out on that Flathead trip—that is, up into the Flathead country, I have known him very intimately for about probably six months after that, and then after that, I have met him at various times since; in fact, every time I would come down there to Missoula I would always meet him. He came down to Missoula and was there a great deal.

Q. Where has he lived during these times?

(Testimony of D. V. Bean.)

A. Well, I think he was up the Blackfoot country; he told me he was up there for some time, and then he moved down to Missoula, I think, after that.

Q. Do you know what his general reputation is for truth and honesty and integrity in the vicinity in which he lives?

By Mr. MAYNARD.—I object to that question, and to the answer thereto, for the reason that the preliminary examination which has been made, shows clearly that the witness is entirely incompetent to express any opinion on the subject, he not having lived at any time in the neighborhood in which Mr. Griswold lives or had lived.

Q. Now, just answer the question, Mr. Bean, that was put to you?

By the WITNESS.—Will I answer the question?

By the EXAMINER.—Yes, you may answer the question.

A. He has none at all; he has no reputation for truth or veracity, or anything that is honest on earth. I know it because I have associated with him enough to know that, and every man that has associated with him knows the same thing.

By Mr. MAYNARD.—I move to strike out the answer of the witness, for the reason that it is not responsive to the question.

Q. Mr. Bean, in the course of some testimony which Mr. Griswold gave in this hearing, he was asked as fol-

(Testimony of D. V. Bean.)

lows: "I will ask you whether or not, at or about the time you commenced this suit in Missoula, you did not say in effect to D. V. Bean, on the street in Missoula, 'I will send that son-of-a-bitch Cobban to the penitentiary if he does not pay me the thirty-five hundred dollars that he owes me,' or words to that effect."

A. No, sir, he didn't say that; that wasn't what he said to me, but if you wish me to state what he said, I will do so.

Q. I wish you would, do so, please?

A. He met me on the street there, and wanted to show me a contract that he had with Mr. Cobban, and I says, "Chauncey," I says, "I don't want anything to do with you." But he insisted on it, and insisted on showing me the contract; and he says, "I will make that son-of-a-bitch pay the thirty-five hundred dollars he owes me there, or I will"—I don't know exactly what the amount was—"but he says, "I will make him pay me thirty-five hundred dollars more on it, and if he does not, I will send him over the road." That is what he said exactly.

Q. The witness was also asked whether on or about the 27th day of April, 1901, he didn't say to you, "I am going to make that son-of-a-bitch [referring to Cobban] pay me thirty-five hundred dollars more," pointing to the contract and referring to it, "and I will get Draffen to send to Zevely, who is a friend of the Secretary of the Interior, and prove all these entries fraudulent and have them all canceled."

(Testimony of D. V. Bean.)

A. Yes, sir, that is just about the words he used; just about the words, he says, "Zevely, is a friend of Draffen, and he can get him out here, and he will raise hell with that son-of-a-bitch there, as well as all you other fellows, too."

Cross-examination.

(By Mr. MAYNARD.)

Q. The United States is suing you at the present time, isn't it? A. No, sir.

Q. Isn't there as suit pending in the United States Court for trespass in which you are a defendant?

A. There was a suit.

Q. Well, why do you say that suit isn't pending now?

A. Because Mr. Rodgers told me he would dismiss the suit because he had no suit against me.

Q. Now, on that information you come here and swear that that suit isn't pending?

A. Well, I consider it isn't pending, sir.

Q. Is that the way you swear without any information whatever except a mere statement of that kind, and make a positive statement with reference to it?

A. There was a suit against me there for buying timbers from farmers; it was no trespass suit at all; it was a suit against me for buying timbers from the farmers; for buying timbers from farmers when they had lived on their ranches, one of them seven years and the other nine. I bought timber and paid them for it, paid them for it, they had a right to sell it; they made

(Testimony of D. V. Bean.)

a little error in the papers and they had no suit against me, practically, you know that, I guess. You have looked at it.

Q. I will inform you now, as a representative of the Government, that I have charge of the suit against you now?

A. Well, that is all right, isn't it—isn't it as I have stated?

Q. Well, now you are swearing on your recollection that there is no case pending against you?

A. Well, I don't think there is, because Mr. Rodgers told me there was no suit pending against me, on the ground that there was an error in the papers, and if you have looked it up, you know it to be a fact. It was an honest, square deal, and we will show that to be such. You know that is so, don't you?

By the EXAMINER.—Well, don't ask any questions; counsel will put questions to you.

Q. How many suits have been brought against you since you have been out here, for committing trespasses upon the public domain?

A. Just that one suit. There was a suit and a criminal suit, and a suit to recover damages on these two places up at Skalkaho, where I bought the timber from Mr. Coffee and Mr. M. D. Newton. And, as I told you before, the District Attorney said he had no suit against me, because I hadn't trespassed. The prosecuting attorney, Mr. Rodgers, told me that.

(Testimony of D. V. Bean.)

Q. What was the prosecuting attorney's name, Mr. Rodgers?

A. Mr. Rodgers. I was summoned down there and I went down to Helena, and I went to Mr. Rodgers.

Q. Never mind, those are the only suits that you say have been brought against you?

A. Yes, sir, those are the only suits that have ever been brought against me, in any shape or manner.

Q. You have been up in the Bitterroot valley nearly all the time that you have been in Montana, have you?

A. Well, I was the foreman for the Anaconda company when I first went there, for a year and a half. I went to mining after that, and lost all I had, all the money I had, and then I went to Hamilton and went to lumbering.

Q. Don't you know that there are suits pending against the Anaconda Copper Mining Company for trespasses upon the timber lands of the United States?

A. Yes, sir, I suppose there is; I put in quite a little lumber for the Anaconda Copper Mining Company. I was manager for Mr. Tolle.

Q. When did you first have your trouble with Mr. Griswold?

A. I never did have any particular trouble with him until one day that I met him in Missoula, when he was referring to Mr. Cobban. I knew very little about Mr. Cobban at that time, but at the same time I had met him several times. I don't remember just the dates, as I said before. He said he had the old son-of-a-bitch—

(Testimony of D. V. Bean.)

Q. Wait a moment. I wasn't asking you about that.

A. Well, I was speaking about it.

Q. I asked you about the trouble you had with Mr. Griswold?

A. Well, I will tell you the first trouble I had with him was when I had him up in the north, up in the Flathead country. I had trouble with him then. I caught him stealing everything he could lay his hands on. At the camps there men would leave their door open, and Griswold would steal everything he could lay his hands on, and I told him if he didn't stop it, I would get rid of him.

Q. How long was that after you had met him in Helena?

A. That was soon after. He was working for me soon after I met him in Helena.

Q. I know, how long after you had met him in Helena?

A. Well, he was up there with me close on to three months, two months and a half or something like that.

Q. That is the first three months that you knew him at all?

A. Well, I had known him probably a month or two before that, just as you would meet a man, you know, as I was from Wisconsin, and he was too, we would like to get together and talk about things.

Q. That is when you made his acquaintance the first time? A. Yes,

Q. You say the first three months that you got ac-

(Testimony of D. V. Bean.)

quainted with Mr. Griswold was at the time that you had him up in the Blackfoot country with you?

A. Well, yes, that was about the time.

Q. You say he stole from everybody?

A. He would get into the camp and go into the cabins and steal everything he could lay his hands on.

Q. Now, name one thing that he stole?

A. He stole a butcher knife, and he stole a screen that you put coffee in to keep the grounds from going through, and he would steal anything he could get his hands on.

Q. Now, you have named a butcher knife and a screen that he stole. What else did he steal?

A. I couldn't give you it right now. I couldn't remember.

Q. Now, you have named these two things; what else did he steal?

A. I got him and caught him right at it, and told him if he took anything else that belonged to anybody else, that he could take his things and go, and I told him that I wouldn't have him do anything of that kind around there.

Q. Well, what else now; how long did he work for you after that?

A. He stayed with me something over two months; two months and a half, somewhere along there.

Q. So that after stealing the butcher knife and the screen, and the coffee collander, and so on, you don't know of his stealing anything else, do you?

(Testimony of D. V. Bean.)

A. Well, I stopped him.

Q. Well, I mean after you stopped him?

A. Well, he didn't have any chance to steal anything else. I had money to buy those things, and I had to buy them, and if he took them I would know it.

Q. Was he stealing them from you?

A. He was just stealing them because he could steal them. That was all.

Q. And dividing up with you?

A. No, sir, he wasn't dividing up with me, because I saw him with both of them.

Q. He turned them over to you, didn't he?

A. No, sir, he did not; he said I could have them, and so I just took them; and I ousted him, and I says, "If you take another thing, you will be through with me."

Q. Who owned these camp utensils?

A. Mr. Daly.

Q. And he just picked these two little things up and put them with the rest?

A. He took them up—no, he was going to take the butcher knife home, and I suppose he would have taken everything home, but I wouldn't have it, that is all there is to it.

Q. Well, did you ever see him taking any other things than these two articles that he took as you have said?

A. He brought them in and was going to take them home, if I hadn't stopped him.

(Testimony of D. V. Bean.)

Q. So you don't know of anything else, because you didn't see him take anything else? A. No, sir.

Q. When did he cease to be in your employ?

A. I don't remember the date, but I think it was in July. I think he worked about two months and a half, but he got so discredited that I wouldn't have him any longer; I think it was in July. I know it was somewhere about the 10th, that is my recollection about it.

Q. Well, a butcher knife and a coffee strainer. Now, then, did he ever work for you after that?

A. No, sir, never.

Q. Never since? A. No, sir, never a minute.

Q. What is that?

A. Never a minute, I said.

Q. Have you ever had any dealings with him of your own?

A. Well, he offered me some dealings, but I wouldn't have them.

Q. Well, that is the question I asked you, if you ever had any dealings with him yourself?

A. I have had no dealings with him since.

Q. And your home has been up there, and you have been committing trespasses upon the public domain, near Hamilton, have you?

A. I never committed any trespasses, sir, upon the public domain.

Q. You will swear to that, will you?

A. Yes, sir, I will swear to that; I never have, only

(Testimony of D. V. Bean.)

legally. No, I never have committed any trespasses upon the public domain.

Q. Your trespasses are of a legal character, are they?

A. Every foot of timber I have ever cut has been sanctioned by the Secretary of the Interior, under his rulings.

Q. Under your construction of his rulings, I suppose you mean?

A. Under his rulings, sir, I said.

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and has nothing to do with the issues in the case.

Q. And your business has been conducted up there south of Hamilton, hasn't it? You have been cutting timber up in that vicinity?

A. Well, I got a permit up there on the Hughes creek country. I got a permit up there to cut timber and sell it for the mines; that is all I had up there. That is south, a little south of Hamilton.

Q. Where is the other part of it?

A. Part of what?

Q. Your work there around Hamilton?

A. Well, I don't know that it is any of your business where it is that I have committed any trespasses, if I have, you come up there and I will show you, and I shall be glad to meet you up there and show you where I have been cutting.

(Testimony of D. V. Bean.)

Q. Well, you will have an opportunity just as soon as I can get around to it. A. All right.

By the EXAMINER.—Just put questions.

Q. Your home, then—what I am asking about is during this six or seven years that you have been in the State, your headquarters have been up there at Hamilton, haven't they? A. Yes, sir.

Q. But your work has been many miles away from there? A. Not very many.

Q. Well, how many miles away from there?

A. Well, for the first year and a half I was with the Anaconda Copper Company up there in the Bitterroot valley, and afterwards that was changed to the Anaconda Copper Mining Company. I worked there under Mr. Toole's instructions, while he lived.

Q. Well, how many years were you up around there?

A. I didn't say years; I think I was up there a year and six months.

Q. Around Hamilton, do you mean?

A. Yes, that is my home there.

Q. Now, Mr. Griswold has during all of that time that you have been in the state of Montana, and while your home has been at Hamilton, had his home up there in the Blackfoot country, with the exception of a small length of time that he has spent in Missoula?

A. I don't know where his home has been.

Q. You don't know where his home has been?

A. No, I don't know anything about it. I have met him in Missoula several times, and I met him at the

(Testimony of D. V. Bean.)

time he went with me here to Hamilton; that is, he started up with me.

Q. I am not asking about his home during the months that you speak of; I am asking about the six years since.

A. The only time that I met Mr. Griswold was when he was around Hamilton, that is, at that time. I met him in Missoula, though.

Q. And those have been chance meetings, haven't they?

A. Yes, that is what they are, I suppose.

Q. Just as you might meet any man when you would go down from Hamilton to Missoula.

A. Just as if I met him at Hamilton; I would be glad to meet you. Well, I would rather meet you than Chauncey, because I think you are a better man.

Q. Well, now, Mr. Bean, if your knowledge of Mr. Griswold has been of so slight a character as you now have testified to, with the single exception of the three months that you were with him a year and eight months ago, how are you prepared to say that you know anything about his general reputation in the neighborhood in which he lives for truth and veracity?

A. And honesty? Can I answer that, Judge?

By the EXAMINER.—Yes, you can answer it.

A. Well, I will tell you: Soon after we got back from that trip on the Flathead country, Mr. Griswold, his brother and a man by the name of Easterly, came up to

(Testimony of D. V. Bean.)

Hamilton. They came to my office. I had an office there at the time. I was doing logging for the company, and he made a proposition to me, and that proposition was that he would go and look over the land where the timber had been cut and depredations had been committed by the Anaconda company, and he would give the facts that he had obtained, and lay them before the Interior Department, and the proposition that he made was that unless the company paid a big amount of money for it, that they would get cinched, that is, the Interior Department would cinch it, on their testimony, and they would have to pay a large amount of money, and he said, "If you go in with me on this deal, he says, I will divide with you." And I said, "Chauncy, you are a dirty cur, that is what you are." I said, "I employed you and your brother when you had nothing to eat, and I took you up there and paid you and your brother, and now you try to work me in this way." And I says, "If you fellows want anything to do with the Anaconda Company, it is none of my business, but you can go to hell." That is the next proposition that Mr. Griswold made to me. He was trying to work a blackmailing scheme on the Anaconda company there, but I wouldn't have anything to do with it.

Q. Now, let us see, what is this you say, you were then in the employ of the Anaconda Copper Mining Company?

A. Yes, sir, I was.

Q. As a cruiser?

(Testimony of D. V. Bean.)

A. No, sir, I was no cruiser.

Q. Well, what was the nature of your employment at that time?

A. I was general manager of the lumber and timber business, with an office there in the bank building at Hamilton; I didn't have to do any cruising, I hired a man to do that.

Q. How long had you been in the employ of the company when Mr. Griswold came up there?

A. I have an idea it was probably—well, I think it was the fore part of July, somewhere about that time; it was in July, I think, that I met him and his brother up there in the Flathead country, and I worked around there until along about the last of July for Mr. Daly, before I took charge. It was sometime in July that I took charge of the logging and timber business for Mr. Daly.

Q. And how long did you remain in the employ of the company after this trip was made by you?

A. I think I remained close to a year and a half, or a year and a quarter, something like that.

Q. After that?

A. Yes, sir, after he made this proposition to me.

Q. Yes, sir. Now, then, the proposition was this that he proposed to make an examination of the depredations that had been made by the company on the public domain, and find out just exactly how much they had stolen, and then be in a position to report the mat-

(Testimony of D. V. Bean.)

ter to the Secretary of the Interior in case they didn't settle.

A. In case that he couldn't blackmail them, that is what you want to say.

Q. Well, that is what you say?

A. Well, that is what I say, and it is right, too.

Q. What he did say was, that in case they didn't settle with him he was to make this report?

A. Well, that was it, that they would have to settle with him.

Q. Now, that was the proposition, wasn't it?

A. Well, I have stated it, and I can't state it in any different way.

Q. Well, didn't I state it fairly?

A. No, you didn't state it fairly.

Q. Why?

A. Because they had no reason to settle with him; they had nothing to settle with him for. If you would come there as a Government officer and look over those things, I should be glad to give you all the information I could about it, and I would be glad to do it.

Q. You would have been glad to show me the depredations that had been committed?

A. Yes, sir, every foot that they had cut, they had a permit for, and I can prove that, too.

Q. How much had they cut that was wrong?

A. Mr. Daly isn't in this case at all.

(Testimony of D. V. Bean.)

Q. Well, you said that you would be glad to point it out to me?

A. Yes, sir, any time you will come up there I will help you in any case against the Anaconda Company, right and square.

Q. Very well, I just wanted to know about how many depredations they had committed?

A. Well, the Anaconda Copper Mining Company isn't on trial here.

Q. I wanted to know how many feet you could point out, so that I could make my plans clearer, and how many feet I would have to state had been cut by the Anaconda Company.

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and is irrelevant and immaterial, and entering into a matter that is entirely without the scope of this investigation, and the counsel is trying to get facts to prosecute a case against other parties than the defendant.

A. He can get all that I know without bringing it in here; anything that I know that is wrong, he can get it.

Q. Now, Mr. Bean, the proposition of Mr. Griswold's was to ascertain the depredations that had been committed?

A. That is the supposed depredations that had been committed?

Q. Yes, sir.

A. Yes, sir, that is right.

(Testimony of D. V. Bean.)

Q. And he proposed with you to go in with you?

A. Yes, he made that proposition that I could help him out in it a little bit and he would divide.

Q. And because you were in the employ of the company at the time you refused to go in with him?

A. No, sir, because I was an honest man, that is why I refused to go in with him.

Q. Didn't you tell him he could go into it if he wanted to?

A. I told him he could go to see Mr. Daly, or to the devil, if he wanted to; he could do as he liked about it.

Q. I understood you to testify a moment ago that you told him that he could go into it if he wanted to, but you would not?

A. It was a matter that I had nothing to do with, and I reported the matter to Mr. Daly, and if you want me to tell what he said, I will tell you about it.

Q. I don't care anything about that at all. Now, what is next, then?

A. Well, what next thing.

Q. That you ever found in Mr. Griswold's record or his life or actions to criticise?

A. Well, the next thing was after that when he showed me contract between him and Mr. Cobban; that was the next thing; well, there was—well, that is right, that is, that was the next thing, this Cobban matter was the next thing.

Q. Well, now, this proposition to assist the Government in looking up these depredations that were com-

(Testimony of D. V. Bean.)

mitted by your company was a short time after the Flathead experience, wasn't it?

A. Well, I think, that is by Mr. Griswold and Mr. Easterly, the two. Griswold returned a short time after that, yes.

Q. And the third and last time that you can specify is this Cobban episode, which occurred about a year or a year and a half ago?

A. Yes, something about that, I think.

Q. So that during the intervening six years you had heard nothing or knew of nothing in Mr. Griswold's life to criticise?

A. Yes, I knew of something, that is, by pretty correct rumor that I heard.

Q. By rumor?

A. Yes, pretty correct rumor; that is, I don't want to state it unless you want it; I will give it to you if you want it.

Q. I want to know anything in your own dealings, or anything that has come directly to you, if you know anything at all?

A. Well, of course, what Chauncey would tell me wouldn't be reliable at all. I know that and every man knows that that ever had anything to do with him.

By Mr. MAYNARD.—In behalf of the Government, I distinctly now, and have from the beginning, challenged the defense with all the power that they have, to investigate Mr. Griswold's life from the time—for

(Testimony of D. V. Bean.)

anything in his record that is worthy of his impeachment, outside of what they may criticise in this timber case that is now under investigation. That is the challenge that we offer at this time.

By the EXAMINER.—Just put questions to the witness.

By Mr. MAYNARD.—I desire to have this go into the record.

By Mr. WALSH.—We had a sort of a vague idea that we had already met that challenge.

By Mr. MAYNARD.—Now, the position of the Government is that they have absolutely failed in every way to bring any witness here to criticise the character or life of Mr. Griswold, any more than any of us could be criticised by enemies of those whose interests it would be to criticise us.

Q. Then, I want you again to state if you know anything about Mr. Griswold, in his life in any way that is wrong, to specify it?

A. Well, I will tell you. When he came to me and made the proposition to go in with him to blackmail the Bitterroot Development Company and the Anaconda Mining Company, was that the act of an honest man?

Q. I am not asking you that. You have already gone over that. I ask you again to specify if there is anything in his conduct to be criticised?

A. I had very little to do with Mr. Griswold.

(Testimony of D. V. Bean.)

Q. Had very little to do with Mr. Griswold?

A. Yes, sir, very little.

Q. Well, sir, how are you able, then, being able to specify only these three particulars, the butcher knife and the coffee screen episode, and the proposition to detect your company's depredations in stealing from the public domain, and the threat in the suit brought against Mr. Cobban, in which he recognized his liability by settling with him, leaving those three episodes out of his life, and the only things that you are able to specify, how are you able to say now, and come upon the stand and swear that his general reputation for honor and truth and veracity in the neighborhood in which he lived is bad?

A. Well, I will tell you, Colonel, when he made that proposition to me, I went to Mr. Daly with it, and I said—

Q. Never mind, I dont' care what you said to Mr. Daly?

A. Well, we didn't accept his proposition, that is, I as the representative of that company did not accept the proposition he made. We considered that we had committed no trespasses at all, as we had permits under the rulings of the Department of the Interior, and we had a right to cut that timber. That is what I considered as a representative of that company. If you want to bring in the Anaconda Mining Company into this suit, I am ready to testify for them. We didn't

(Testimony of D. V. Bean.)

have to commit any depredations under the rulings of the department. That you know as a representative of the Government.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Bean, perhaps you didn't understand the last question that was addressed to you. Counsel asked you if you had any other ground upon which you could base your opinion concerning the reputation of Mr. Griswold, other than these three matters that you have talked about?

A. He didn't. I said that in regard to the Cobban matter, what he proposed to do.

Q. Yes, and you also stated about the trip up the Blackfoot, and you also stated about the attempt to blackmail the Anaconda Mining Company?

A. Yes, sir.

Q. Now, the counsel asked you if you had any other basis for your opinion concerning the character of Mr. Griswold; in other words, have you heard anybody say anything about what his reputation is?

A. His general reputation is as bad as any man's could be.

Q. Have you heard people say so?

A. Yes, sir, I believe nine out of every ten men say so. They will say that he is a rascal and the truth is not in him.

Q. Have you heard any people say so?

(Testimony of D. V. Bean.)

A. Yes, sir; I have. I couldn't name the people, but almost every man that has talked to me about him.

Q. You don't tell us, Mr. Bean, what finally became of this threat of Mr. Griswold's to get some money out of the Anaconda Copper Mining Company, but I wish you would do so?

A. Well, I will tell you exactly what became of it. I went to see Mr. Toole—

By Mr. MAYNARD.—I object to this question for the reason that it is immaterial and irrelevant, and not legitimate direct or cross-examination, of the witness.

By Mr. WALSH.—I offer it as redirect examination, because the matter was brought out by counsel for the Government on his cross-examination.

A. Mr. Griswold came to me and told me that he had got everything up, had got all the facts up, and he was going to send that report in, and prior to this—

By Mr. MAYNARD.—Furthermore, I desire to make the additional objection that Mr. Daly, to whom this report was made, is now dead, and the examination is of such a character that it is not now competent in this manner for this witness to testify to a conversation had with Mr. Daly, who is now dead.

Q. Now, go on?

A. I went and saw Mr. Daly.

Q. Well, go on, Mr. Bean?

(Testimony of D. V. Bean.)

A. I simply say this, that he came to me and he said, "I am going to send that report right in, and it will stop you cutting on the permit." Mr. Kendall, at this time, was cutting under a permit, under a permit that was given to the Anaconda Mining Company and the Bitterroot Development Company, one or the other of them, I don't know which it was that had the permit at that time, and he said, "I am going to send that report right in." And I went there to Mr. Toole, and he was living there then and was manager at that time, and I laid the matter before him, and he says to me that we must keep that report out for three months, and I says, "I don't know."

(By Mr. MAYNARD.)

Q. Whose report was this?

A. Mr. Griswold.

(Witness continuing.) And Mr. Toole said, "We must keep this report up for three months," and I says, "Why do you want to do that," and Mr. Toole says, "Well, I will tell you. If this report should go in it might stop Mr. Kendall from cutting under the permit, because the report might get them to cancel the permit, and he said, "If he won't send it in at this time, it will be all right, but if he does send it in it may stop Mr. Kendall from cutting under the permit." At that time, Mr. Kendall was cutting under a permit, and finally, under Mr. Toole's instructions we paid Mr. Griswold a thousand dollars.

(Testimony of D. V. Bean.)

Q. For what?

A. For keeping that report out for three months, a thousand dollars, when he wasn't entitled to three cents or anything; he had no business there at all. That was under Mr. Toole's instructions, not Mr. Daly's. At the same time Mr. Kendall was cutting right on the permit which the Government had granted to the Bitterroot Development Company or the Anaconda Mining Company, I don't know which it was at that time.

Recross-examination.

(By Mr. MAYNARD.)

Q. Did you see this report that Mr. Griswold had?

A. No, sir, I did not; he offered to show it to me, but I didn't want to see it; I had no reason to see it at all.

Q. What is that?

A. No, I had no reason to see it; I didn't want to see it.

Q. That was the result of his investigations in part, of the depredations committed by your company, was it?

A. No, sir; not the depredations, but the supposed depredations, is the way that Mr. Griswold got his pay out of it; it was a blackmailing scheme that they had to get ten thousand dollars.

Q. And your company, after looking at this report that he was to make, being the result of his personal investigations, paid him a thousand dollars rather than have the report sent in.

(Testimony of D. V. Bean.)

A. Mr. Toole was on his deathbed at the time, and he died a short time after that, and he said for fear they will send in a reprt of this kind to the Interior Department, and that will stop us from going on with the permit, that we had better give him a thousand dollars so as not to stop Mr. Kendall from cutting. He just done it to keep him quiet, so as to go on cutting on the permit that we had from the Government.

Q. How long did they cut after that on that particular piece of ground?

A. Well, a permit, you know, covers about four square miles; that is usually the way it is; you understand that. That is the way it was at that time; they have cut it down a little now. They cut off the timber on that permit, that is, the timber they could cut.

Q. Well, now, Mr. Bean, I want you to name just one man, and name the time and name the place that you ever heard make any charges against Mr. Griswold, just one.

A. Well, I heard Mr. Kendall say he was a blackmailing son-of-a-bitch, but I don't remember the very day he said it.

Q. Mr. Kendall was the man that was working under this permit for which Mr. Griswold received from the company a thousand dollars?

A. Mr. Kendall was working under the permit received by the Anaconda Mining Company. He paid the money for the company, and said what he did.

(Testimony of D. V. Bean.)

Q. Well, now, name another one.

By Mr. WALSH.—We object to this because counsel said he was only going to ask for one.

Q. Well, I will ask for two.

A. By God, Colonel, if I knew the names of men in Missoula, three or four of them, I could tell you the whole of them. I have heard Herb McLeod say that he was irresponsible, and no good on earth.

Q. What did you hear Mr. McLeod say?

A. I could state what he did say; he said he was no good in any shape or manner. That there wasn't any honesty in him at all.

Q. You heard Mr. McLeod say that?

A. Yes, sir; he told the truth, too.

Q. Whereabouts was that?

A. As near as I can remember, it was in Mr. McLeod's office.

Q. When was that?

A. I couldn't remember the date. I had quite a little business with Mr. McLeod myself. Always went in there whenever I had been in Missoula.

Q. Mr. McLeod has been called here as a witness, hasn't he?

A. I don't know anything about that, at all. I haven't any idea about that; I don't know whether he has or not.

Q. He has given his connection with the firm against whom the Government has claims, too. Now, give us another one?

(Testimony of D. V. Bean.)

A. Well, I know a man by the name of Bean that knows it.

Q. That is yourself, is it?

A. Yes, sir; that is me.

D. V. BEAN,

Subscribed and sworn to before me this 16th day of April, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

FRANK VOGEL, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. T. J. WALSH.)

Q. Mr. Vogel, where do you live?

A. In Missoula.

Q. How old are you, Mr. Vogel?

A. Forty-one years old.

Q. What business are you engaged in?

A. I am engaged in examining and estimating timber.

Q. For whom?

A. At the present time for the Big Blackfoot Milling Company.

Q. How long have you been associated with that company?

A. It will be four years next October.

Q. In what capacity?

(Testimony of Frank Vogel.)

A. As timber inspector, in charge of all the timber land of the company.

Q. And what are your duties in connection with the matter of the inspection of timber?

A. I make an estimation of the timber and also purchases from individuals, the State of Montana, or any other party that may have timber to sell that we desire to purchase. I have charge of all trespasses and examinations in connection therewith.

Q. Are you familiar with the section of country along Blackfoot river?

A. Yes, in a general way; I have been over most of it.

Q. Do you know one L. A. Wells, who lives up the Blackfoot, Mr. Vogel? A. Yes, sir.

Q. And his wife? A. Yes, sir.

Q. How long have you known those people?

A. I have known Mr. Wells for probably twenty years, as we were born and brought up in the same county in the State of Minnesota. Mrs. Wells, I have only known about three years.

Q. Are you in possession of any information as to the fact of Mr. and Mrs. Wells having taken up claims under the Stone and Timber Act during the year 1899?

A. Yes, sir.

Q. How did you come to get the information, Mrs. Vogel?

By Mr. MAYNARD.—I object to this question, and the subject matter to which it relates, on the ground it

(Testimony of Frank Vogel.)

is immaterial and irrelevant to the issues in this case, and is entirely incompetent to prove any issue that is raised by the bill of complaint, or any averment made in the answer of the defendant.

A. During the summer of 1899, I think—well, during the summer of 1899, I was engaged in making examinations both in the Blackfoot district and in the Hell Gate Canyon, and Mr. Wells came to me and said that they had taken up a timber and stone claim; that is, he said he had, and his wife also had taken up a claim, and he asked if we would advance money to pay for them, to pay for proving up before the local land office at Helena. I said that I thought there would be no objection on the part of the company to my advancing the money.

Q. Go on, Mr. Vogel.

A. I didn't see the claims, however, until after the final proofs had been made, and the money advanced. I am not sure what date it was, but I think it was in August, 1899, when Mr. Wells made application to me for the money to prove up on one of the claims; I am under the impression that it was his own, and I said that I would instruct the Bonner office to send the money to Marshall & Stiff at Missoula, and he could call there and get it, and gave us as security for the loan, a mortgage on the claim, after he had proved up. I think the same course was taken in regard to the money advanced to Mrs. Wells, to aid her in proving up on her claim in the Helena land office, and the money was sent to Marshall & Stiff's office from the Bonner office, and

(Testimony of Frank Vogel.)

through them was paid to her upon her giving the security that I instructed them to take from her.

Q. Now, Mr. Vogel, was this an unusual or an extraordinary transaction with you?

A. It was not entirely unusual, still we did it only in a few cases. I think in nine instances I advanced money to parties to aid them in proving up on their timber claims during that year.

Q. During what year was that, 1899?

A. 1899; yes, sir.

Q. And how, if at all, were you reimbursed or secured for the advance of the money that you made, as you have stated?

A. By a first mortgage as security on the claim proven up on, except one that we purchased. We purchased one claim, and we took no security for that, as the parties sold the claim; but in other cases we took security.

Q. But in any event, after final proof had been made you either bought the land from the parties, or they gave you a mortgage as security? A. Yes, sir.

Q. And you think there were nine cases that you advanced money in during the year 1899?

A. Yes, nine; and I think I could name them all.

Q. And of these you purchased but one claim?

A. We purchased but one claim.

Q. What became of them, if you know?

A. In some of the cases the timber was subsequently sold to Mr. Gobban.

(Testimony of Frank Vogel.)

Q. What were the names of the parties who subsequently sold to Mr. Cobban?

A. Well, Mr. Wells, Mrs. Lizzie Wells, and Mr. McDonald; I have forgotten his first name.

Q. Mr. Vogel, you spoke of this having been advanced in 1899?

A. No, sir; none preceding; and only in one or two instances since the purpose was altogether to aid the parties in securing the claims, not as a business matter; that is, I didn't care to go into the loaning business.

Q. Well, did you find that the matter of advancing money to these parties who desired to take up these lands in the expectation of giving a mortgage, and your getting a mortgage from them after they had made final proof, was it a mere matter of risk as to the probability of your getting a mortgage as security?

A. I don't know as it was; I knew all the parties personally, and I considered it safe.

Q. Did the parties prove recreant in any instance?

A. Not at any time. When they sold claims they came in and satisfied the mortgage and paid us what they owned us, and we charged them whatever charges there were on account of attorneys' fees and other matters.

Q. Did you ever have any negotiations with Mr. or Mrs. Wells prior to the time that they sold their claims and after they had made final proof concerning the purchase of them by you? A. Yes, sir.

Q. And what was the result of these negotiations?

(Testimony of Frank Vogel.)

A. I think in October of the same year Mr. Wells wrote me and said in substance that he wished either to sell his claim to the Blackfoot Milling Company, or secure a loan of from nine hundred to twelve hundred dollars. I replied by letter, stating that we did not care to loan any more money on them, and that I would make him an offer for each claim, which I did. Subsequently to the time of the final proof I had made an examination and estimate of the claims, and knew—or at least what I considered them worth to the company, and I am under the impression that I offered them sixteen hundred dollars for the two claims, and, as I stated to him in a letter, it would satisfy the mortgage which I had, and that I would then cancel it, and that would give him about seven hundred dollars.

Q. Now, in this case, or in these cases where you purchased, Mr. Vogel, do you recall how much was paid by you over and above the amount that you had advanced to the parties?

A. Well, in the first two purchases of claims where I had advanced the money, I cannot remember the names, but one was Mr. Bruner, of Ovando, and the other was Mr. Honsecker, and they wrote and stated that they didn't care to pay the taxes any longer, and that they would sell their claims; in fact, Mr. Bruner came to see me. I had had an estimate made as to the amount of timber, and I had a fair idea of what the claims were, and I told these gentlemen that the claims were not worth much more than the amount it cost to

(Testimony of Frank Vogel.)

prove up, four hundred and fifty dollars or so, and I didn't want to see them lose any money, and I offered and they accepted fifty dollars over and above what they owed us. In the two other cases, Mrs. McLean, R. J. or R. F., I am not sure, R. F., I think, and Mr. Goodfellow, of Ovando, nearly a year after we advanced some money to them they wished to sell, and I had considerable correspondence with them about purchasing this land, and stated the offer which I made, and they accepted it. I wouldn't be sure but my impression is that I paid them two hundred dollars over and above the amount advanced on the claims. In all cases I did not agree to buy the claims. It was along about a year from the time that they proved up, and if they needed it to carry them, why I allowed them to have it, and when they got ready to sell, the amount on the purchase price would be allowed to them and the balance, whatever it was, paid.

Q. Mr. Vogen, in the course of the negotiations that you had with Mrs. Wells, referring to the purchase of their claims, what, if anything, was said concerning the sale of these claims to Mr. Cobban?

A. Nothing whatever, because he expected to sell to me when he made the offer, but he wanted considerable more than I offered him, or was willing to pay him.

Q. Was there anything said about Mr. Cobban at the time Mr. Wells applied to you for the loan with which to make the proofs?

A. I am not sure that he mentioned Mr. Cobban's

(Testimony of Frank Vogel.)

name; he said they wanted to be independent, so that they could sell wherever they pleased. Whether he said he wanted to be independent of Mr. Cobban more than anyone else, I could not say.

Q. Your instructions, as I understand you, Mr. Vogel, were given to the Bonner office?

A. I at all times requested the Bonner office to send the money over to Helena or to Marshall & Stiff, at Missoula. You understand that I was in the field and couldn't always be found when these parties wanted to get the money, so I left word to have the money where these parties could get at it, so as to enable them to make their proof, and that is the reason I left word for it to be sent to Marshall & Stiff, at Missoula, or to Helena, as I have stated.

Q. You think that you had made no estimate of the timber upon the Wells claims prior to the time the money was advanced?

A. I am positive of that. I had made no estimate of the timber on any of the claims upon which I advanced money.

Q. How, then, Mr. Vogel, did you satisfy yourself that the security was adequate for the purchase price and to cover the money you loaned?

A. I knew what the claims were, that they had been looked before, and we knew that they could not be worth less than the amount required, four hundred and fifty dollars. That they would be worth at least that much.

Q. Mr. Vogel, I wish you would tell us whether you at

(Testimony of Frank Vogel.)

any time had any negotiations with Mr. Cobban looking to the purchase of any timber from him up the Blackfoot?

A. I had considerable talk with Mr. Cobban during that summer of 1899 about timber that he was to sell, but I am not sure of the month, but I think it was in August. It was in August or September when he asked me if we wished to buy some timber up there, and I requested him to send me a list of the lands which he had for sale, and I would then consider the matter, and check up the list and reply to him. I think within a day or two I received the list from Mr. Cobban, and after looking it over I replied, in substance, that the price he asked per thousand feet was too high, and that we would have to decline to give it any consideration.

Q. Have you got that list of lands now?

A. I think I returned that list to Mr. Cobban, but I think within a month after that, Mr. Donohue, of the Anaconda Company, who was at that time our vice-president, sent me a map with the letter, stating that parties had certain timber lands on the Blackfoot for sale, and that I should advise him what I thought about it. I looked at the map and I at once noticed that it covered the same lands that were in Mr. Cobban's list. It was sent to Mr. Donahue by Mr. Richardson, of Great Falls, and I replied to Mr. Donahue that we already had that list of lands and that we didn't care to purchase it.

By Mr. MAYNARD.—I move to strike out all of the testimony of this witness, in regard to this conversation had

(Testimony of Frank Vogel.)

with Mr. Cobban, and the testimony that he has given in regard to his estimates, for the reason that it is irrelevant and immaterial to any issue raised either by the bill of complaint in this case or the answer of the defendant.

Q. You may state, Mr. Vogel, whether at any time you had an option on any portion of the land owned by Mr. Cobban?

By Mr. MAYNARD.—I move to strike out all of the testimony of this witness, in regard to this conversation had with Mr. Cobban, and the testimony that he has given in regard to his estimates, for the reason that it is irrelevant and immaterial to any issue raised either by the bill of complaint in this case or the answer of the defendant.

A. I did not have an option.

Q. The negotiations, or the result of those negotiations, were as you have stated?

A. Yes, sir, it was simply an option to us, and I considered the list of lands submitted to us by Mr. Cobban and rejected it.

Q. Now, do you know now where the lands were situated that were embraced in that offer, Mr. Vogel?

A. Yes, sir.

Q. Where were they?

A. They were all up there together in the Blackfoot waters, probably on what we call Camas creek; I mean in township thirteen, range fifteen, and thirteen range, and sixteen, and around on Gold creek and other tributaries of the Blackfoot river. I have a map which was furnished to me by Mr. Cobban, or it came, rather, from

(Testimony of Fra[illegible]ogel.)

Mr. Richardson, of Great Falls, covering the lands in question. I kept that map when it was sent to me.

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Vogel, who are you working for now?

A. I am working for the Big Blackfoot Milling Company.

Q. In the same employment, doing the same work that you testified about? A. Yes, sir.

Q. And how long have you done that work?

A. For the Blackfoot Milling Company, do you mean?

Q. Yes, sir, for the Blackfoot Milling Company?

A. Since October 1st, 1898.

Q. Your mill is at Hamilton—at Bonner?

A. One mill is at Bonner.

Q. Where is your other mill?

A. We have a large mill at St. Regis.

Q. On what river is that?

A. It is on the Missoula river, or the Clark's fork of the Columbia river.

Q. Did you have any trouble with the Clark people in 1898 or 1899, in regard to your logs?

A. No, sir, I never had any trouble with the Clark people.

Q. I didn't say you, I mean your company, in regard to floating logs on the Nine Mile?

A. No, sir, we didn't drive logs on the Nine Mile; we didn't operate on it ourselves.

Q. You never did? A. No, sir.

(Testimony of Frank Vogel.)

Q. Is there any trouble resulting from two or more owners sending their branded logs down one stream, other than the trouble of assorting?

A. I hardly know how to answer your question, because that is a practice that we have never had in the State of Montana. What I mean is, no two companies have ever sent their logs down the same stream at the same time—the same year.

Q. You know that that is frequently done, do you not?

A. I know that it is frequently done in the Eastern States.

Q. Was it not done in Montana, Mr. Vogel?

A. No, sir, as a rule only one company operates on one stream. Logs are not driven, they are hauled over the roads to the mills, mostly; there are only four mills in the western district of Montana that have their logs driven to them—the western district.

Q. Point out the distinction between driving and hauling, will you please?

A. Driving logs is floating them in the water from landing to sawmills; hauling them is placing them on skids or trucks and hauling them from the ground down to the mills.

Q. And there are only three or four such cases in Montana that is, where they drive the logs?

A. Four mills is all I know anything about.

Q. Where the logs are driven to the mill?

A. Well, five, I guess; five mills, and three cases where

(Testimony of Frank Vogel.)

the company does it. I can specify them if you care to have it.

Q. Well, timber that is growing on the land that are away from the mills, and not near by the water is not valuable, is it? A. No, sir.

Q. Now, then, in your experience with the Big Blackfoot Milling Company, which I understand you to say, ten cases are all that you can now recall where the company has advanced money to buy land, to buy timber land?

A. Yes, sir, nine cases, I think, is the exact number. My letter-book will show every case where we have advanced money. Nine, I think, is the exact number where we advanced money for that purpose.

Q. I thought you said that there was one more, that made ten? A. I think not.

Q. So there is just nine cases. Now, then, were those nine cases, nine charity cases?

A. Well, I can say no to that, I think.

Q. Well, what I mean is in each of these nine cases, was it an act of friendship on your part?

A. It was an accommodation, to a great extent, to the parties to whom we advanced the money. The parties would come to us and would say, "I have made an entry on a stone and timber claim, and I haven't got the money to make the final proof, will you loan it to me?" I say, "Yes, but I want security on your claim after you have proved up, to secure us for the money we advance, because we are not doing a loaning business, and in order to help

(Testimony of Frank Vogel.)

you prove up on your claim, I am willing to loan you the money."

Q. Were each of these nine cases under the Stone and Timber Act, Mr. Vogel? A. No, sir.

Q. How many were under the Stone and Timber Act?

A. I think eight of them were.

Q. And all of them during the year 1899?

A. Yes, sir.

Q. Can you recall the other names?

A. Yes, sir, I think I can.

Q. Well, let us have them, please?

A. L. A. Wells, Lizzie Wells, Goodfellow, Mrs. R. J. or R. F. McLean, Bruner, David Hunsecker, and McDonald. I cannot just now think of the eighth one under the Stone and Timber Act.

Q. And what is the ninth one, under some other act, is it?

A. The other one, the ninth, was Lizzie Sanson; it was a commutation proof.

Q. Well, now, these eight where you loaned money under the Stone and Timber Act was that an individual act of your own?

A. No, sir, I in all cases advanced the company money, and the security was in favor of the company.

Q. Whom did you consult with in regard to this matter, Mr. Vogel?

A. No one, I had full authority to act in the matter myself.

(Testimony of Frank Vogel.)

Q. Then, it was the individual act of your own, so far as the loan of the money was concerned?

A. Yes, sir, but I have full authority to loan money on timber, or to buy timber, and to do as I please in such respects.

Q. Did you have full authority from the corporation that you represent and work for to loan money to individuals as a mere act of accommodation, with no benefit whatever resulting therefrom to your company?

A. That is rather a hard question to answer, Mr. Maynard; if you will divide it up, I can answer it better. I would rather have you divide it up.

(At the request of the Examiner, the question was read to the witness.)

A. There is really two answers to that question. One is as to the benefit to the company, and the other is as to the authority. Of course I can answer them probably.

By Mr. BICKFORD.—We will ask, if your Honor please, that the question be read in sections, and that it be answered that way for the accommodation of the witness.

Q. It is a little, simple, short question, and doesn't admit of division.

By the EXAMINER.—Read the question.

(Question read to the witness.)

A. I think I can answer that question. I have full authority to so loan money. It never has been stated whether it was to be for the accommodation of people or

(Testimony of Frank Vogel.)

otherwise, and I was of the opinion that it was to the benefit of the company, as we could obtain security—or we could get security and charge the parties ten per cent interest for the loan, which, I think, was ample benefit to the company for the money advanced.

Q. You say that you didn't want the timber?

A. I didn't say that.

Q. Well, did you want the timber, Mr. Vogel?

A. Well, if we could buy it at a reasonable price, yes, sir.

Q. Well, did you have that in mind at the time you made the loan, did you have in mind the securing of the timber?

A. It had been in my mind, but there was no contract and no specification. I told the parties that they could sell their claim wherever they could get the best price for it, and whenever they could, and I left them free to act as they pleased in the matter.

Q. How many of them sold to you, Mr. Vogel?

A. All except the three that I have mentioned in the other evidence; all of them except those three.

Q. All of them except Mr. and Mrs. Wells?

A. Yes, and McDonald.

Q. How soon did they convey to you, to your company, after receiving receiver's duplicate receipt?

A. I don't think any of them sold to us within a year, or about a year, some were longer; but in each instance they came to me about that time and asked me to make them an offer on their timber. I think they all had their

(Testimony of Frank Vogel.)

patents at that time, and on account of the timber being isolated, and hardly worth the money advanced, or, perhaps, a little more, I didn't want to purchase, because I said, "I cannot give you much for it, above what we have loaned you." And I, in all cases, advised them to sell wherever they could get the best price. If they could get more for it than I offered them, why to go on and sell to other parties.

Q. And how much in the six cases—out of the nine cases—six out of the nine—how much did you, when you bought the land, pay in excess of what you had advanced?

A. In the case of Bruner, I paid him fifty dollars above the amount advanced, with interest thereon. In the case of David Hunsecker, and Mrs. McLean, I think, I paid them two hundred dollars above what we had advanced to them, and I think Mr. Goodfellow the same.

Q. And Mr. Goodfellow how much?

A. Two hundred dollars. One of those cases may have been two hundred and fifty dollars, but without referring to my record, I could not say which one.

Q. How much, Mr. Vogel, giving it an average, the best you can, exercising your best judgment, would you say, was the commercial value of the timber, growing upon an average one hundred and sixty acres of land up in the Blackfoot country?

By Mr. BICKFORD.—We object to that for the reason it is not proper cross-examination, and for the

(Testimony of Frank Vogel.)

further reason it is not proper cross-examination, and for the further reason that it has not been shown that there is any average of commercial timber growing upon the Blackfoot?

By Mr. MAYNARD.—I haven't finished my question yet. Please read the question, Mr. Cooper.

(Question read).

Q. I guess that will do.

By the EXAMINER.—You may answer the question, Mr. Vogel.

A. I can only answer that in a general way, as I haven't made a complete examination of the Blackfoot district. I will make this statement, that some of the claims have no commercial value whatever. Others are worth two thousand dollars, twenty-five hundred dollars, in several instances. The average for the whole district is certainly not over six or seven hundred dollars per claim, up in the Blackfoot district, for all the timber on it up there. It depends altogether upon the elevation the timber stands, more than it does upon the distance the timber is from the water. If a claim is located upon an elevation of fifteen hundred or two thousand feet above the valley below, it has little or no commercial value, especially if the timber is standing on high elevated ground and rough rocky ground, and I simply refused to consider any such claims, simply stating that they are of no value to us, and we couldn't give anything for them. To answer your question di-

(Testimony of Frank Vogel.)

rectly, I would say that six or seven hundred dollars would be a very fair average as far as I have any knowledge of the district.

Q. Nearly all of this timber grows upon the steep mountain side, does it not, Mr. Vogel?

A. The largest part of it grows on mountain slopes, on the hills or the mountains.

Q. In this entire Blackfoot country, what would be the average?

A. The slopes that are timbered attain an elevation of 3000 feet above the valley, and these elevations were secured by the Anaconda Company with barometers, and we took an elevation at the bottom of the hill, and we took another at the summit, and we found that as a rule the timber grows to about that elevation.

Q. How much did you say?

A. Three thousand, that is the maximum elevation.

Q. Three thousand feet down to the base of the mountain?

A. The base of the mountain, I believe it is, where the timber must be brought down to the stream, or to the tramways or railroads as the case may be.

Q. And the average, as near as you can get at it, would be about how high?

A. Well, it would be hard to tell. The slopes run back that distance.

Q. Is that an average slope—three thousand feet?

A. That is the maximum.

Q. Is that the timber line, do you mean?

(Testimony of Frank Vogel.)

A. That is the timber line, as a rule, three thousand feet above the valley where the district is located.

Q. Well, was this the timber line—the elevation in the whole Blackfoot country is on a maximum of about three thousand feet?

A. Yes, about.

Q. So, then, as you are working there, and as you see the pine growing there, it is from one foot up to three thousand feet.

A. We start in our present work, and we climb up the mountain. We start from the valley, or somewhere near there, and climb up for three or four miles, and after we have climbed for three or four miles, that takes us to the timber line and as a rule we are on an elevation of two or three thousand feet when we get across here to the timber limit. Of course we are climbing all the time we go up the mountain, and all the time we are gradually elevating up.

Q. Now, what did you say about there being little or no value to the timber at that point?

A. When it gets up to two or three thousand feet it has no commercial value.

Q. Why not?

A. Because at the present price of logs, when we get the logs to the mill it would cost more to get them down than we can buy them for. In other words; it costs more to get logs to the mills from this point than we could get for them at the mill.

Q. Then between the two thousand and the three

(Testimony of Frank Vogel.)

thousand limit, would you say that the claims have little or no commercial value?

A. That is what I would say.

Q. And then from the first thousand feet up, how much would those claims be worth?

A. As a rule I place the valuation from a dollar upwards on such timber, from a dollar to a dollar and a half; the maximum value is about a dollar and a half.

Q. Per thousand? A. Yes, sir.

Q. On the first slope?

A. Yes, where it is easy to get the timber out, but on the ridge higher up it is about fifty cents lower.

Q. What about between the two and three thousand limit?

A. Well the ground may be so rough and broken that it is hard to log. We place our valuation on that somewhat.

Q. Up from one to two thousand feet, except in an extraordinary condition you place the timber at a valuation of a dollar a thousand?

A. Yes, that is the way we regulate it.

Q. And a dollar and a half is the maximum?

A. Yes, a dollar and a half is the maximum.

Q. And how much do you get per thousand on a hundred and sixty acres of land?

A. Well, that is nearly as hard a question as your other. Simply a general answer. Do you want the average on a timber district in the State of Montana?

(Testimony of Frank Vogel.)

Q. I am asking about the Blackfoot country where these claims are taken up.

A. Well, I would say seven or eight hundred thousand would be an average for that timber area.

Q. Well, that would bring the commercial value of the growing pine upwards of a thousand dollars, wouldn't it? A. On what?

Q. On those claims?

A. Why, if the average is two thousand feet elevation it would be worth fifty cents per thousand.

Q. I am asking about the first two thousand, I am not asking about the third thousand?

A. Well, you didn't state so.

Q. I thought you understood so?

A. No, I didn't know what you were talking about.

Q. Well, that is what I am talking about.

A. Well, please state the question again.

Q. I am asking if there is seven or eight hundred thousand feet of pine growing upon these claims of a hundred and sixty acres each, they would be worth upwards of a thousand dollars to the point where the two thousand point existed?

A. No, up to the point where the one thousand point was exceeded, from the valley to the one thousand feet elevation timber is worth a dollar and upwards; it would make claims below the one thousand foot elevation an average claim, probably one thousand dollars.

Q. Now, were those claims of yours located within the thousand foot limit?

(Testimony of Frank Vogel.)

A. No, sir; I don't think any of them were except the Wells claim. You mean those that I purchased myself.

Q. Yes, those that you purchased yourself?

A. No, those that I purchased, some of them were on the summit, some very high.

Q. Now, when you loaned this money, you, as a business proposition, would have been glad to have received the assignment of the deed at once, would you not; would you have been glad to have received a deed from them?

A. I cannot say that I would have been particularly glad about it.

Q. Well, I mean, if you could have got it for a hundred dollars in advance of what you put into it?

A. Well, in taking chances, I will state that two of those claims were not worth a hundred dollars more than they—I know some of those claims were not worth more than a hundred dollars more than what it cost to prove up on them.

Q. The honest truth about the matter is, that when you loaned this money as the agent of a corporation, to these people, you loaned the company's money to them, knowing that you would sure get nothing, or believed from your knowledge of these people that were friends of yours, that you would sure get a deed of the land which would more than remunerate you for what you had advanced, or that you would get an interest

(Testimony of Frank Vogel.)

bearing note for ten per cent, secured by a mortgage on the property? A. Yes, sir.

Q. So that you knew—

A. I say yes, sir, I knew that we would get that security with a ten per cent interest bearing note.

Q. On the loan?

A. Yes, I loaned that to them, with the idea that if we could agree upon a price after they had proven up, that I might take it.

Q. Well, now, did you pay this money in the Land Office?

A. No, sir, I had no personal connection with the case at all, as I have heretofore testified, in all cases the money was either sent to Marshall & Stiff from the Bonner office, as I had instructed them, or it was sent to our agent in Helena—not our agent, I mean the man in charge of our yards there—that if these parties called upon him to advance the money to them to prove up on their claims. I instructed him to do that.

Q. Well, what were your instructions?

A. After they had proved up, to take a mortgage on the land for the money advanced, and a note bearing interest at the rate of ten per cent per annum.

Q. That is, after they had got final receipt from the Receiver of the land office?

A. Yes, sir, after they had proved up, I suppose after they had got their final receipt, the same day that they proved up.

Q. And on the day that they proved up to take a ten

(Testimony of Frank Vogel.)

per cent interest bearing note, and a mortgage on this property to secure that note? A. Yes, sir.

Q. For how long a time? A. For one year.

Q. Then you would have these mortgages recorded, wouldn't you?

A. Yes, sir, in all cases we would put them on record

Q. How many days did you give them the money to make the payment before the day of proving up came?

A. At Helena, I think they called upon Mr. Swinehart for the money the day they would prove up. At Missoula, at Marshall & Stiff's office, I think in some instances they would come there a day or two before; I am not sure about that though.

Q. What is Mr. Swinehart's name?

A. D. E. Swinehart.

Q. That is, Mr. Swinehart would give them the money on the day that they proved up?

A. Yes, sir.

Q. Well, would he give it to them or would he give it to the land office?

A. I never was there, and I never asked Mr. Swinehart what his method was. I know he always sent the note and mortgages back. I know they always came back and he made a report to the effect that the money had been advanced.

Q. What did Mr. Swinehart do—What did Marshall & Stiff do, the same thing, send the note and mortgage back?

A. Yes, they would send the note to me, and they

(Testimony of Frank Vogel.)

would send the mortgage to be recorded, and then they would send in a report showing that the money had been advanced.

Q. And as to their method of doing business, whether they went in and paid the money into the land office, you don't know that, do you?

A. No, sir, I never was present to see any of these matters done.

Q. So that both Marshall & Stiff who were working for the company in Missoula, and Mr. Swinehart, who was working for the company in Helena, so far as you have any personal knowledge, paid the money directly into the land office for the benefit of those entry people.

A. They may have done it, but I don't know as they did.

Q. And you know that they got the note and mortgage that you described, on the same day?

A. No, I don't know as I always knew what the date of the mortgage was. I know that they got it, and I know that they were all satisfied by the parties to whom we loaned the money I know that part of it.

Q. As a business proposition, Mr. Vogel, would you think it would be a fair business proposition for your company to loan the amount of money that it would be necessary to make the purchases of the land, to pay the Register's—to pay the land office fees, and the publication and other fees and all the expenses of inspection and so on, and advance all the money that was required indiscriminately, I mean, to strangers, without having

(Testimony of Frank Vogel.)

any note or mortgage or security? Do you think that was a good business proposition?

A. What is that?

Q. Would you say that that was a good movement to do business in that way?

A. I don't think it was very sensible to advance money indiscriminately; I didn't advance money to people indiscriminately; I knew the people to whom I advanced the money. They had a standing in the community, and they were known to the company, and sometimes they had been in the employ of the company, and they came to me and asked me for an accommodation, saying that they didn't have the money themselves, and that if I didn't let them have the money, they would have to let their timber and stone entries go by default and couldn't prove up on them.

Q. Now, Mr. Vogel, in each and every one of these cases, when these people came to you in the way that you now have testified, soliciting this accommodation, wasn't there a distinct proposition made to you as to what they would do about securing you?

A. Why, I told them what security they would have to give me.

Q. You exacted it yourself, did you?

A. Yes, I told them they would have to give a mortgage after they proved up. Of course, I had told them what I wanted, and if they didn't do it, they showed that they didn't keep their agreement with me. I had to take those chances, of course.

(Testimony of Frank Vogel.)

Q. The only chances that you took were these: That when they made this proposition to you, requesting a loan, you told them the terms upon which you would make a loan, as you have testified, and they said that they would comply with your request, and you knew the people, and knowing them, you trusted them and believed in them, and the only chances that you took were of their refusing to do as they had agreed previous to their securing the money?

A. That is it exactly. After they had proved up, if they didn't agree to give that mortgage security, I had no recourse except against them personally.

Q. And in each and every case there was a prior agreement, wasn't there?

A. That they would secure us for the money advanced to them.

Q. And you wouldn't have loaned them the money unless they had made this prior agreement?

A. Not as a representative of the company. Personally, I might, but loaning the company's money, I had to have a return for it; security for it, after they had proved up on the claim.

Q. And they wanted the money under those conditions?

A. Yes, sir, and I gave it to them under those conditions.

Q. Well, now, I ask you again, I want to know what would be the average number of thousand feet on what would be regarded as an average good claim?

(Testimony of Frank Vogel.)

By Mr. WALSH.—It strikes me that there is a contradiction of terms, when counsel says an average good claim; it may be misleading to the witness, and for that reason we interpose an objection.

By Mr. MAYNARD.—Well, if the witness don't understand what I mean, that is all right; he can say so.

By the EXAMINER.—You can answer it in your own way.

A. As a rule we considered an average good claim one that is worth taking up.

Q. Yes, that is what I mean?

A. A million feet, if it is located anywhere in the valley or on the first benches or slope, or a thousand or fifteen hundred feet; if the slopes are smooth on the bottom.

Q. An average claim that was worth taking up by anyone that understood this, and that it was worth buying?

A. No, I said an average claim that was worth taking up; a claim is frequently worth buying because we had use for it, but I say an average good claim is one with a million feet of timber on it, and you can take that out under the Stone and Timber Act and pay the fees at the land office and the Government price, and pay for the land, and then have something left.

Q. Well, how much would he have left?

A. Well, that would depend. It would depend whether it was one that was available so that the timber would be used on it.

(Testimony of Frank Vogel.)

Q. Why, that is what I want; I want you to average the matter for me?

A. I have testified before that an average claim is one that has seven hundred thousand feet of timber on it; that would apply again to the whole district.

Q. How much pine would there be on an average claim?

A. I have purchased claims that had as low as four hundred thousand feet on them.

Q. These timber claims, then, would range in value from six hundred dollars up to two thousand dollars?

A. Yes, it is very seldom that a claim is worth two thousand dollars, and very seldom that any claims that have been taken up in the past few years have been worth that much.

Q. What would be the maximum price of claims that were taken up in 1899?

A. That is a question I cannot answer.

Q. Well, give us your best judgment about it. You say those taken up within the last few years. What would it be worth, fifteen hundred dollars, the maximum?

A. Yes, there are some claims that are worth fifteen hundred dollars.

Q. And how much would be the minimum of the claims that were taken up during the time that you have mentioned?

A. Well, five or six hundred dollars, as I have tes-

(Testimony of Frank Vogel.)

tified; that is a little more than it would cost, probably to take them up.

Q. Then it would average from five hundred dollars up to fifteen hundred dollars?

A. Well, it would depend altogether upon the claim and the quantity of timber on it and the location of it.

Q. Well, do you know of a good many claims being taken up in this year, 1899?

A. I knew that a great many were being taken up.

Q. Did you know some of the persons that were taking them up?

A. I knew very few of them personally. I read in the papers where they advertised their claims, that is, where they published notices of the taking up of claims.

Q. Did you read the "Missoulian" during this season?

A. I took the "Missoulian," yes, and read it whenever I was in town.

Q. Did you read the "Garnet Mining News" that was published that year?

A. I occasionally read it, yes.

Q. And you knew, as a matter of fact, that there was a very large amount of interest taken in this stone and timber matter, don't you?

A. Yes, sir, and homestead, as well; taking up claims under both.

Q. But did you ever know at any time during your connection with the Big Blackfoot Milling Company, of such an interest in taking up claims under the Stone

(Testimony of Frank Vogel.)

and Timber Act before or since, as there was during the year 1899?

A. No, I think that more interest was shown then, and it all came about by Mr. Daly purchasing the Big Blackfoot Milling Company there, and they felt that timber was worth more; that there would be a bigger demand for it.

Q. Were you buying any timber under the Stone and Timber Act?

A. Yes, sir, we bought timber from the railroad; I bought any timber that was available and that I could get at reasonable prices.

Q. You were buying that year, were you?

A. Yes, sir, I was buying indiscriminately; whenever I could get a claim at a good price, I bought it.

Q. You have reference to the year 1899, haven't you?

A. Yes, sir.

Q. How many of these entrymen under the Stone and Timber Act, applied to you for you to buy, except these nine that you have mentioned?

A. Well, I had a great many come to me.

Q. About how many did you buy?

A. I couldn't say without referring to my record; I bought so much timber. Of course I have an actual record of the purchases that were made.

Q. Every entryman and—was there any entryman or entrywomen under the Stone and Timber Act?

A. No, sir, no women.

Q. No women?

(Testimony of Frank Vogel.)

A. No, not that I remember of.

Q. Have you any present recollection as to the number of men you bought from under the Stone and Timber Act during that year?

A. No, sir, I couldn't say.

Q. Were there over fifty?

A. I think I bought over fifty thousand dollars' worth of timber during that year, but it would be impossible for me to state just how many and just who they were at this time.

Q. Well, did you buy from them directly after they had proved up?

A. Frequently when we did buy; I was given to understand that when a party was given his final receipt, that I was safe in making a purchase; that it was just as good as a patent, and I acted in accordance with that advice in all cases.

Q. And only in nine cases did you advance the money?

A. That is all that I remember of.

Q. And how many cases did you refuse, where applications were made?

A. A great many where parties had claims that I considered of no value; I couldn't say how many. I had dozens of applications every month where people wanted to sell me timber claims or the timber that they owned, or had acquired, or that they were possessed of.

Q. Did you refuse in cases owing to the fact that you didn't know the people?

(Testimony of Frank Vogel.)

A. Refused to buy, do you mean?

Q. Refused to buy when they applied to you for money because you didn't know them?

A. I may have done so; it would have been entirely natural for me to refuse to advance money to somebody I didn't know.

Q. You know that you didn't advance money to anybody that you didn't know?

A. I don't know now, I don't remember.

Q. You have mentioned some, haven't you?

A. Yes, I know of people making application to me, and of my refusing them, but why, I did, I couldn't tell you now.

Q. Haven't you any instance in mind where you refused because you thought they would refuse to carry out their agreement with you?

A. I have none in mind at this time.

Q. You have none in mind at this time?

A. No, sir.

Q. Well, did you know of Mr. Cobban taking up claims up in that region of country, under the Stone and Timber Act during that period?

A. I knew that he was buying claims; I saw in the newspaper that he was buying timber lands, and something more. He offered me some as I have testified, including scrip lands and homestead entries, where he had bought the timber, but as to knowing what he was doing exactly, of course, I don't know; I hardly knew Mr. Cobban at that time.

(Testimony of Frank Vogel.)

Q. You had no conversation with him, did you, as to how he was getting these claims?

A. I didn't meet Mr. Cobban to speak to him until September, 1899, and then he spoke to me.

Q. This was in September, 1899?

A. Yes, sir.

Q. Where were you?

A. I think it was in Missoula; he asked me if I didn't want to buy these timber lands that he had on the Blackfoot river, and I said, "Well, if you will send me the list, I will consider the matter and let you know."

Q. He sent you the list, did he? A. Yes, sir.

Q. And you thought the prices that he offered to sell at were too high?

A. Yes, I thought it was too high; that is, I thought it was too high for me.

Q. How much did he offer them to you for?

A. Well, he wanted a dollar and a quarter per thousand, and I thought it was worth about seventy-five cents, and I told him so.

Q. Do you know how much timber there was on this list that he submitted to you?

A. Well, Mr. Cobban claimed that there was about forty million feet.

Q. What was there on the list that he sent to you beside the description of the land?

A. Nothing whatever, just simply gave me the de-

(Testimony of Frank Vogel.)

scription, because he knew that I knew the country up there and had made estimates on a great deal of it.

Q. You didn't know from whom he had obtained the lands, did you?

A. No, sir, of course, I would have had to look it up and have an abstract made, if I had considered his proposal to sell, but that wasn't necessary because I couldn't accept his proposal.

Q. He told you how he got the land, did he?

A. No, sir.

Q. He never did? A. No, sir.

Q. And no one of the people that sold to you at any time ever said anything to you about offering to sell, to Mr. Cobban? A. No, sir.

Q. Never in your life was there a single man that spoke to you of it?

A. Some of them might have mentioned it, some that I knew, but I had no general talk with anybody about selling the land to Cobban.

Q. How many did you have a conversation with that you—that you knew, you say you knew some of them?

A. I couldn't tell, now. I have a recollection of having heard more or less about it, and might have talked to some of them about it.

Q. Whom did you have a talk with?

A. I don't remember; I was in the field estimating all the time, and only came to Missoula once every two weeks, and I very seldom saw any of these people.

Q. Didn't you see any of these people at any time

(Testimony of Frank Vogel.)

up in the woods, Mr. Sparks, or Mr. Griswold, or Mr. Jemison, or any of these men that—or Mr. McLaughlin or any of these men that were estimating timber up there?

A. I don't remember ever having seen Mr. Griswold in that district; I was on the Hell Gate canyon, nearly all the summer.

Q. Who was it that you met there?

A. I met Mr. Sparks up there in the summer; I have forgotten the month.

Q. What was Mr. Sparks doing?

A. My recollection is that he was estimating timber claims.

Q. He didn't tell you so, did he?

A. No, sir.

Q. He didn't tell you who he was working for, did he?

A. No, sir, it is strange to say he did not.

Q. Did you ask him who he was working for?

A. No, sir, I did not.

Q. Well, he knew who you were working for, didn't he?

A. I suppose he did; I didn't ask him if he did.

Q. Can you give me any reason why meeting a man up in the woods and finding out that he was estimating timber, it was that you didn't ask him who he was estimating timber for?

A. Well, in the first place, Mr. Sparks is a stranger

(Testimony of Frank Vogel.)

to me; I only saw him for a instant just as he was driving by.

Q. That was the only time that you met him?

A. The only time that I met him.

Q. And you never had any conversation with him as to who he was working for and who he was estimating for?

A. I think that is the only time I saw him.

Q. And you never had any conversation with him on the subject? A. No, sir, I did not.

Q. Who were these others, the other parties that you had a conversation with and that told you that they had sold to Mr. Cobban?

A. I have some recollection of them, but I couldn't tell you who they were.

Q. And you have no recollection as to what the conversation was? A. Not particularly, no, sir.

Q. Not particularly, you say?

A. No, sir, it was of no great interest to me.

Q. Didn't they tell you at the time what they had got from Cobban? A. No, sir, they did not.

Q. Nor what arrangements they had made with them?

A. No, sir, I never had any talk with any one about that.

Q. You never heard that during the entire season of 1899? A. No, sir.

Q. When people were going up there in crowds?

A. No, sir, I wasn't up there.

(Testimony of Frank Vogel.)

Q. Well, where were you?

A. I was up in the woods.

Q. How far, when you were in the woods, would you be from these claims that were located by Mr. Cobban?

A. I was in the Hell Gate canyon, and these are on the Blackfoot river. One was on the Deer Lodge, and the other on the Blackfoot, in a different district; I worked between Bonner and Garrison, nearly all summer in these mountains, on the north side of the track. There were very few claims there; in fact, it is an unsurveyed country.

Q. So that you were in a different region of country pretty much up there in the mountains?

A. Yes, sir.

Q. And that is the reason you don't know?

A. I suppose that is the reason.

Q. Now, was there anything about these Wells Claims that was peculiar in any way?

A. In what way, will you please specify?

Q. Well, counsel has called your attention at length to the Wells' claim, and if there was anything—do I understand that they owed you or your company?

A. No, we loaned them the money at ten per cent interest and took security, and when they sold the claim, if I couldn't pay them what they thought they were worth, they went to Mr. Cobban I suppose. Anyway, they came to Bonner and the cashier up there, and we got the money that we loaned them, to prove up on the claim. They paid the money back and ten per cent in-

(Testimony of Frank Vogel.)

terest, and as I remember it, I instructed our people to charge them attorney's fee for drawing up the papers and having the mortgage recorded, and so forth.

Q. You say you knew Mr. Wells back in Minnesota?

A. I knew him as a boy in Minnesota; he lived in one town and I lived in another.

Q. Do you know anything about his occupation?

A. I knew he was a rancher up there in that country.

Q. He supplied your mills with meat, did he not?

A. Yes, sir, I think he did for two or three years.

Q. And he obtained two or three loans from your company, didn't he?

A. I think it was the practice of the company whenever he had a contract to advance him money to carry on the business, but that was directly before I came here.

Q. Sometimes when he wanted to get meat to sell to your company and carry on his business, he borrowed money and secured your company by a mortgage on his home, didn't he?

A. I don't think he ever gave any mortgage; I couldn't say as to that; I have no knowledge of any such security having been given.

Q. But you won't say that it was not true?

A. It might have been, I wouldn't say.

Q. And they were supplying meat to your company at the time that these mortgages were given, were they not? A. No, sir.

(Testimony of Frank Vogel.)

Q. Weren't they doing business with your company at that time?

A. The contract to supply the company with meat wasn't given until the fall, in October, I think. He then secured a contract along about the first of October or the last of September, I think; he had no standing contract; he might have secured a contract to supply the camps with meat that winter, I think he did.

Q. And he secured the contract in October, you think?

A. Sometime in October, I think; I couldn't say exactly.

Q. Do you remember where the money was obtained to pay for the entries they made under the Stone and Timber Act?

A. I should say in September and October, two different amounts, at two different times, because they proved up at two different times. I think one was made a month prior to the time the other was made.

Q. Yes, and after a while these loans that were given by the company were paid, and then they got some money after they secured their title?

A. I don't know as to that. When they sold their claims he paid back the loans; I suppose he realized the money—I know from the proceeds of the sale he paid our loan back.

Q. Well, was the application made to you for the loans? A. Yes, sir, personally to me.

(Testimony of Frank Vogel.)

Q. By both of them?

A. By Mr. Wells, on the part of himself, as well as on the part of Mrs. Wells. Mrs. Wells never asked me to loan her any money on her claim.

Q. Well, you are not able to say, are you, but what after the arrangements had been made by Mr. Wells to secure this money from your company for these claims, but what she might have got some money from some other source. You are not able to say as to that, are you?

A. I know that both Mr. and Mrs. Wells came to Marshall & Stiff's office and went immediately to Helena to prove up.

Q. Well, were you in Marshall & Stiff's office at that time? A. No, sir.

Q. Were you in Helena when they were there?

A. No, sir.

Q. What makes you swear so positively, then?

A. Because they executed a note and mortgage at that time.

Q. And all that you know about it then, is simply the execution of the notes and mortgages?

A. Yes, of my own knowledge, but that is conclusive proof, if they went there and got the money.

Q. I want to know from you if she got the money there for one purpose, whether she might not have used the money that she got from her father's estate to use for another purpose.

A. Well, she might have. I don't know about that.

(Testimony of Frank Vogel.)

Q. Very well, I just simply want you to tell what you know, and not what you don't know.

By Mr. BICKFORD.—Well, he was asked if he was prepared to say that they did not—

By the EXAMINER.—Well, let the witness answer.

Q. I want you to answer from your own knowledge.

By the EXAMINER.—Just put one question. You already have several questions there. Now, put one question and that will embrace them all; just put it to suit yourself. Put the question now, to the witness.

Q. I say, are you willing to swear that Mrs.—from your own knowledge, that Mrs. Lizzie A. Wells, didn't pay for her claim with money that she received from Minnesota?

A. I couldn't swear that she did or did not.

Q. All that you are able to say is that you know that during the month of August or September of the year 1899, she executed a note and mortgage to your company, at Marshall &Stiff's office in Missoula, and that the papers were returned from their office to the Bonner office; that is all you know about it?

A. I know that Mr. Wells applied to me for the money and stated the purpose for which he needed it, and that I authorized the Bonner office to send the money to Marshall & Stiff's office at Missoula, and I know that the notes and mortgages were returned to the Bonner office, and I know that Mrs. Wells executed a note and mortgage in the same way, I know that.

(Testimony of Frank Vogel.)

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Vogel, what is the business of your company?

A. The business of the company I am with is manufacturing and selling timber and lumber, and buying timber.

Q. They are not engaged in the business of loaning money, are they?

A. No, sir, they are not.

Q. Now, it appears from the list of persons to whom you did advance money for the purpose of enabling them to make final proof, that there was some women.

A. One, Mrs. McLean.

Q. Mrs. McLean. What investigation, Mr. Vogel, did you carry on for the purpose of ascertaining what separate estate Mrs. McLean had, or what real estate or personal property she was possessed of, other than her interest in the claim? A. None whatever.

Q. Are you able now to state as to whether she did or did not have any personal estate of her own?

A. I am not; I know nothing about the personal estate of Mr. McLean or Mrs. McLean.

Q. As I understand the matter, then, you were willing to loan the money to them simply upon the merit of the claim, upon which they were to prove up, and the security on that claim?

A. I knew the location of the claim, and knew the timber district, and I knew that they would not want to take up a claim that there wasn't any timber on.

(Testimony of Frank Vogel.)

Q. And that you knew from your acquaintance with Mrs. McLean?

A. Mr. McLean, when I came to work for the company, had a contract to put in logs at the upper end of the Salmon lake, and I met both Mr. and Mrs. McLean there; they had worked quite a little while for the company, for the old Big Blackfoot Company, for a number of years, and I knew that they had a logging outfit, and when they wanted money to prove up, I let them have it. They said they had no money of their own to prove up on, and asked me as an accommodation to advance it to them.

Q. I wish you would state, Mr. Vogel, what investigation you made concerning the property or wealth of any of these nine different persons to whom you located the money with which to make their final proof?

A. None, whatever. I took the security that I testified to, a mortgage on the claim. That was the best security I could get on the money advanced in all these cases.

Q. Do you know the names of any of the entrymen whose entries are in question in this action, Mr. Vogel?

A. Why, I don't know; I suppose I might if they were recalled to my memory.

Q. I give you a list of them, and I wish you would look it over and let me know if you can recall any of these people, as being among these whom you testified came to you with a view to selling you their claims?

A. I can answer, yes, sir.

(Testimony of Frank Vogel.)

Q. What is it, go on and state, Mr. Vogel.

A. Of the names mentioned in this list, Mr. Mickels came to me. He had been a contractor for the Big Blackfoot Milling Company, in the winter of 1898 and 1899, and he asked me to advance money on a claim for himself and wife, that is, separately on their claims. I agreed to do so, and I instructed the Bonner office that when they called there, to give them the money. I had some conversation with one of the Muchmores; I am not positive which one it was, and he wanted me to advance him money. Also they came to me and offered to sell the claims, but I didn't advance any money to them; he came to me and asked me to buy his claim, but I didn't buy it. As far as I can see, those are the only ones that came to me.

Q. You think that is all that came to you?

A. I think so. Mr. Mickels and one of the Muchmores, I don't remember his name, came to me.

Q. I understood you, Mr. Vogel, to testify in one case where you advanced money, you purchased the lands very soon after the making of the final proof?

A. That was a homestead entry that was commuted; that was the entry of Lizzie Sanson, in the Plains district. She sold to us a little while after making her final proof.

Q. In that particular instance where you bought the claim, did you take any mortgage upon the property?

A. No, sir, I did not. The party who advanced money to Mrs. Sanson to prove up on, did it under my instruc-

(Testimony of **Frank Vogel.**)

tions. That if she wanted it as a loan, to take a mortgage and note as security, but if she preferred to sell, I would give her so much for the claim, and she concluded to sell.

Q. And how was this transaction carried out, Mr. Vogel?

A. This same party, Mr. McGowan, had known Miss Sanson for some years, and he wrote to me about it, and sent in a report, and we sent them the money to pay for the claim. We did not send him the money in the first place, but he advanced the money and we paid him afterwards what he had paid out.

Q. But, as I understood, you directed him to advance the money, and after she had made final proof, she made a deed to the property, and you paid her for the claim?

A. Yes, sir, that is the way it was; that was my contract.

Q. She did sell it, then?

A. Yes, sir, she did sell it; she sold as she had agreed to.

Q. So that you never paid the money yourself, but it was paid to Marshall & Stiff, or through Mr. Swinehart, in Helena? A. Yes, sir.

Q. Now, counsel asked you about the condition of affairs that would result in case any of these parties refused to execute any mortgage as security; then you said you would be compelled to rely upon them personally, as I understand you. In the case of timber and stone entries,

(Testimony of Frank Vogel.)

there would be no difficulty, that you know of, to prevent you suing and attaching the claim?

A. I suppose not, but still I am not versed in the law, and I don't know. If anything arose I would usually go to see my attorneys about it.

Q. With regard to the homestead, you understood it would not be subject to any objections if a contract was made prior to the issuance of the receiver's final receipt?

A. I don't know anything about that.

Q. You don't know that either? A. No, sir.

Q. Now, then, about the average number of feet and the average value of the claim. When you speak about these figures, are you to be understood as giving figures that are specifically accurate, or is it wholly in the nature of a guess?

A. It is in the nature of a guess, where I cannot give the accurate figures on it. For instance, in our purchase from the Northern Pacific Railway Company, we purchased a hundred and fifty thousand acres. Our average per acre, on that hundred and fifty thousand acres, was a little less than 480,000 feet per claim. The second list that I purchased from the Northern Pacific, I think, contained 180,000 acres, and in this case the average per acre was about 3,000 feet per acre.

By Mr. MAYNARD.—Three thousand what?

A. Three thousand feet per acre, making an average of four hundred and eighty thousand per claim. We took everything that they owned, that is, everything that had

(Testimony of Frank Vogel.)

any timber on it, any quantity of timber to amount to anything.

Q. What did they own in that country?

A. They owned every odd-numbered section. They own every odd-numbered section along the line of the road.

Q. And you became the owner of them by purchase from them?

A. By purchase from the Northern Pacific, yes.

Q. Do you know when the surveys of the lands taken up on the Blackfoot, in 1898, were made and approved, Mr. Vogel?

A. I do not. Some of them, of course, run back ten or fifteen years. There are some more recent, but I couldn't say the date.

Q. And to what cause do you attribute the taking up of the infrequent amount of claims that were taken up in the year 1899?

A. Why, one great cause was the purchase by Mr. Daly of the Blackfoot Milling Company, and the fact that we were acquiring timber. Another cause was the fact that I had purchased from the State of Montana about fifty million feet at two dollars per thousand. That was the winter before, and in one instance we paid as high as four dollars per thousand, which was a very foolish purchase on our part. These things made people think that there was going to be a great competition and a great rush for timber, and that it would be worth while for them to take up a claim.

Q. Now, the counsel asked you concerning your knowl-

(Testimony of Frank Vogel.)

edge of Mr. Cobban acquiring timber. I wish you would state, Mr. Vogel, whether it was generally known and reported in the city of Missoula, and thereabouts, in the summer of 1899, that Mr. Cobban had hired a large number of people to go out and take up claims in his interest, and that fraudulent entries were being made of timber lands, with a view to conveying them to Mr. Cobban?

A. Of course I heard something about people taking up claims, but I didn't hear much about it; I was away a great deal of the time.

Q. What have you to say about it being generally known in that community?

A. I don't know much about that, as I stated before; I was in Missoula very little, and I met Mr. Cobban late in the fall, and our conversation didn't touch upon anything in that respect.

Q. You testified concerning the timber offered by Mr. Cobban that you had estimates on. How did you come to have the estimates on the amount of timber in the hands of Mr. Cobban?

A. The old Blackfoot Milling Company had operated on the Blackfoot river for ten years prior to that, and had made a general examination of that country, at least of the unsurveyed lands, and these estimates were in my possession. I had myself made estimates the preceding fall, the fall of 1898, covering part of the District, and knew the location and value of most of that timber.

Q. Well, what was the idea that the company had in

(Testimony of Frank Vogel.)

mind, and you yourself had in mind, in making estimates of timber that you yourself had not acquired?

A. We make a general estimate of everything. We estimate the timber owned by the State of Montana, or the Government, and we make complete estimates—in other words, of all the timber in every township. My records show an estimate of every forty acres of ground. We do it for the purpose of having it on hand; we can then refer to our record for any information that we need on the subject. We have made estimates on all the timber in the western part of the State.

Q. Then, as I understand it, it is in the regular course of the timber and lumber business? A. Yes, sir.

Q. And then, if you are desirous of acquiring timber in the vicinity, you will refer to it in order to get your estimates of the amount of timber on the land?

A. Yes, sir.

Q. And you know the amount of timber on all the sections, the even as well as odd?

A. Yes, sir, we make the estimates on all of it for the purpose of ascertaining and knowing how much timber there is on it.

Recross-examination.

(By Mr. MAYNARD.)

Q. In any one of these nine cases that you have named, that you loaned money, was there one single one where the loan was made solely on the strength of the security offered, without taking into consideration the character of the entrymen and your knowledge of them?

(Testimony of Frank Vogel.)

A. Why, the consideration was the primary cause; that is, the security was the primary consideration. I wouldn't advance money to anyone unless I knew them and wanted to accommodate them in acquiring their claims.

Q. And if I brought credentials and recommendation of good character, would loan me the money?

A. Not unless you were a friend of mine and came to me and wanted me to help you out. I loaned money to these parties to prove up because I knew them, and that as soon as they proved up and got title to it, or sold it, that they would repay the money. If a stranger came to me or anyone I had no interest in, I said no, in all cases; I referred them to the banks, or, if they had property, they could go somewhere to someone who was loaning money, and get accommodated.

Q. Now, in this single case of this homestead claim, the only case in the history of your company where the deed was given at once, after proving up, that was the only case, was it?

A. Yes, sir. The deed was given that same day, I think.

Q. Instead of the note and mortgage?

A. Instead of the note and mortgage, yes, sir, and the party was fully instructed what to do in the matter.

Q. Well, what were the exceptional circumstances in that one particular case; how did it happen?

A. How did it happen that I bought it?

Q. Yes, sir, how did it happen that she sold that day?

A. Well, she wanted to sell and wanted the money; I

(Testimony of Frank Vogel.)

suppose that was the reason. My letter of instructions to Mr. McGowan, authorized him to do that.

Q. Who is Mr. McGowan?

A. He is a merchant at Plains, Montana.

Q. How far is it from Missoula?

A. It must be sixty or seventy miles from Bonner, west.

Q. How long before that had she secured this money from you? A. To prove up on?

Q. Yes.

A. Oh, she secured that the day she proved up. He advanced that money to her the day that she made her final proof.

Q. How much did he have to pay for that homestead?

A. Four hundred dollars and the fees, of course; two dollars and a half per acre.

Q. And Mr. McGowan, you say—

A. McGowan, yes.

Q. Was he your agent?

A. No, sir, he was my agent in this transaction, I think. He is a merchant there and has no connection with our company.

Q. Do you know this woman?

A. I met her just once.

Q. When did she start to take up this land?

A. Oh, I think she had been residing on it for two or three years. I am not sure how long she had been living on it at that time.

Q. She had been living on the land?

(Testimony of Frank Vogel.)

A. Yes, sir, I think so.

Q. How long a time was she required to live on the land under the statute?

A. To make commutation proof, I think about fourteen months is required.

Q. Fourteen months of actual settlement on the place?

A. Of actual settlement, yes; they all call it actual settlement.

Q. Well, you mean they swear to it?

A. Well, single persons, they go there every two or three months and they call it actual residence; this woman was a single person, an unmarried person, and she testified subsequent to that that she washed for a living, and had to be absent from her claim.

Q. And there was good timber growing upon this homestead claim, was there? A. Yes, sir.

Q. And Mr. McGowan had reported the fact to your company?

A. No, sir, I had an estimate of that long before that; I knew all about the claim.

Q. Well, had you advanced her any money at that time? A. No, sir.

Q. She had been required to pay no money out, had she, up to the time you made the estimate?

A. Well, no, she hadn't made any application to prove up then.

Q. But she was living on the claim, then, was she?

A. She was living on it, I suppose. I didn't examine the land myself, one of our men examined it and reported

(Testimony of Frank Vogel.)

so much timber on it. Her father made application to me for the money to pay her fees and expenses in proving up. I didn't meet her at all upon that part of the transaction.

Q. Why not?

A. Because her father asked me if I would advance the money for her to pay her fees.

Q. Was that the proposition?

A. Yes, sir, the proposition was that she was to pay ten per cent interest, and was to give a mortgage as security.

Q. And that was the agreement that you made with her father?

A. Yes, sir, with her father. They advised me by letter later that they wanted the money, and I instructed Mr. McGowan to advance the money, and gave him the conditions upon which he could advance it.

Q. What did she want the money for?

A. She wanted the money to aid her in proving up, four hundred dollars, I think it was.

Q. After the arrangement had been made?

A. After I had told her that I would advance her that money.

Q. Then they never said they needed the money?

A. Yes, sir.

Q. Very well, you communicated with this man, Mr. McGowan, and instructed him to advance the money that her father had requested? A. Yes, sir.

(Testimony of Frank Vogel.)

Q. And you supposed that that agreement would be carried out?

A. I didn't care if she came to Mr. McGowan and got the money, so long as I knew he would get a note and mortgage as security.

Q. What was the request you made to her, with reference to her selling the claim?

A. I didn't say anything to her. I simply advised Mr. McGowan that if she wanted to sell the claim, to give her the money for it, to arrange to pay her so much for the claim on the part of the Big Blackfoot Milling Company.

Q. How much was it?

A. I think the actual consideration was twelve hundred and fifty dollars.

Q. How much was required to pay the fees for making the entry and final proof?

A. Four hundred dollars was required, and we advanced her four hundred dollars to prove up on the claim.

Q. So you paid her for her claim about six hundred dollars more than the cost of proving up?

A. Eight hundred and fifty dollars would be my arithmetic.

Q. Yes, eight hundred and fifty dollars?

A. That is pretty well before the department; that is all in the evidence before the department. You can get my evidence in that case, if you want to.

(Testimony of Frank Vogel.)

By Mr. BICKFORD.—That was a case that was determined by the Land Department in Washington.

By the WITNESS.—Yes, that case was before the department and I gave testimony. I gave the same evidence there that I am giving in this case.

Q. What was the result of that case?

A. The department sustained the entry.

Q. Did the suggestion come from this woman that she wanted to sell the land, or did you suggest it to her, the matter of her selling the land?

A. I suggested nothing to her. I suggested to Colonel McGowan, and he told her. I wasn't there at all. I didn't meet the woman until after she had proved up.

Q. Where did she prove up?

A. She proved up at Plains.

Q. Who did she prove up before?

A. A. R. Rhone, a United States Commissioner.

Q. And Mr. McGowan resides there, does he?

A. He is a merchant there, Mr. McGowan is, yes, sir.

Q. Yes, he resides there? A. Yes, sir.

Q. He had the money to advance to make the payment for her, did he? A. Yes, sir.

Q. And on that day the whole deal was consummated, was it? A. Yes, sir.

Q. The money was advanced by you and the deed was made by her to your company, and then he paid the money to her? A. Yes, sir.

Q. And that is the only case that you know of in

(Testimony of Frank Vogel.)

the history of your company that any such thing was ever done?

A. Yes, sir, since I have been connected with it, that is, since October 1st, 1898.

Q. And the reason why no note or mortgage was given by the woman was because she desired to sell on the day that she proved up, and did sell?

A. Yes, sir.

Q. Well, now, then you say that you were in Missoula very little during this season of 1899?

A. I resided at Bonner at that time, and I was not in Missoula very much.

Q. But you say you were out in the woods separated by mountains, from Missoula? A. Yes, sir.

Q. And the occasional visits that you made to Missoula, you did hear of this work that was being done by Mr. Cobban, and his crowd, did you not?

A. I knew Mr. Cobban was buying timber.

Q. You heard that? A. Yes, sir.

Q. And you heard something said about it, did you not?

A. Not particularly; I knew that he was buying claims, and that parties were taking them up, homestead claims, and so on.

Q. Now, you have stated that. Do you remember and can you state from your recollection where you heard that?

A. I read it in the newspapers.

Q. Anywhere else besides in the newspapers?

(Testimony of Frank Vogel.)

A. Very little. I went to Missoula once a month, but Bonner was my headquarters. I would come in there and stay a day or two.

Q. How long did you stay at Bonner?

A. One or two days, never any longer than I had to to take care of correspondence and other business.

Q. And at that time, while these things were going on, and you read them in the newspaper, about Cobban taking up these claims, you didn't know anything about the details, and nothing that was going on about it?

A. No, sir, I didn't know very much about it. I was out a great deal, and had other things to attend to.

Redirect Examination.

(By Mr. WALSH.)

Q. Did you ever hear that Cobban was selling claims; that he had claims to sell?

A. Yes, sir; I heard that he was buying claims, and had timber lands to sell.

Recross-examination.

(By Mr. MAYNARD.)

Q. You probably would hear that, wouldn't you?

A. Yes, sir, I suppose I would hear about a matter of that kind in a general way.

FRANK VOGEL.

(Testimony of Frank Vogel.)

Subscribed and sworn to before me this 16th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Hearing adjourned until ten o'clock, Wednesday morning, April 16th, 1902.

Wednesday, April 16th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

FRANK VOGEL, recalled on behalf of defendant.

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Vogel, you mentioned on yesterday having instructed the Bonner office to advance to Mr. Wells the amount necessary to prove up on his claim. I wish you would state whether since the adjournment you have been able to procure your letter from the Bonner office? A. I have.

(Letter marked Defendant's Exhibit No. 303.)

Q. I show you Defendant's Exhibit No. 303, Mr. Vogel, and ask you if that is the letter that you refer to? A. That is the letter.

Mr. WALSH.—We offer this letter in evidence.

Mr. MAYNARD.—Objected to as immaterial and irrelevant to any issue in this case.

Mr. WALSH.—The exhibit is as follows:

(Testimony of Frank Vogel.)

Defendant's Exhibit No. 303.

BIG BLACKFOOT MILLING COMPANY.

Bonner, Mont., August 10th, 1899.

The Big Blackfoot Milling Company, Bonner, Mont.

Gentlemen: Please honor Colonel Marshall's requisition for $450, the amount to be advanced to D. Wells of Ovando, Montana, to prove up on this timber claim in 15 north 12 west. Colonel Marshall will then take mortgage security for money advanced to Mr. Wells until such time as I can examine the land and make an estimate of the timber thereon, at which time we will probably purchase the claim.

Yours truly,

FRANK VOGEL,

Timber Inspector.

Q. Mr. Vogel, I observe that Mr. Wells is designated here as D. Wells. Do you know whether A. D. Wells and L. A. Wells are one and the same person?

A. Yes, sir. I have always known Mr. Wells as Dell Wells, and I don't think at that time I knew his initials; I thought his name was Delbert; I presume it is Adelbert or something like that. We all call him Dell Wells.

Q. Where does this Mr. Wells referred to in the letters live?

A. He lives, I think—he was on section 4 up on Cottonwood Creek near Ovando.

(Testimony of Frank Vogel.)

Q. Do you know any other Wells in that neighborhood? A. No, sir, I do not.

Q. He is the only one there?

A. He is the only one there.

Q. Now, I show you a letter marked Defendant's Exhibit No. 304, and ask you if that is some further correspondence with the Bonner office you had in reference to this same matter?

A. That is a letter written to the Bonner office after receiving a communication from Mr. L. A. Wells, asking if we would buy the claims owned by himself and wife, and I made him an offer, and this is instructing the Bonner office to advance Colonel Marshall $700, should Mr. Wells and wife accept of my offer to purchase their claim.

Mr. WALSH.—We offer this letter in evidence.

Mr. MAYNARD.—Objected to for the same reason, immaterial and irrelevant.

(Letter marked Defendant's Exhibit No. 304, and is as follows:)

Defendant's Exhibit No. 304.

BIG BLACKFOOT MILLING COMPANY,

Bonner, Mont., Nov., 14th, 1899.

Big Blackfoot Milling Company, Bonner, Mont.

Dear Sirs: Please honor requisition of Marshall & Stiff for $700, amount necessary to pay for timber claims purchased from L. A. Wells and wife. We ad-

(Testimony of Frank Vogel.)

vanced money to these parties to prove up with, and should they sell to us for the offer made by me we will cancel the mortgages and pay them this balance. Also please honor their requisition for $100, equity in northeast quarter of section six, 15-25, at present owned by the M. M. Company. This is the claim on which we advanced to Mrs. Dorothy Skinner for proving up. Mr. and Mrs. Wells may not accept my offer, and in that event no requisition will be made.

Yours truly,

FRANK VOGEL,

Timber Inspector.

Q. Mr. Vogel, was the claim of Mrs. Dorothy Skinner referred to in this letter among the 9 or 10 that you referred to in your testimony of yesterday?

A. Yes, sir, it was the one stone and timber entry that I could not remember where I had advanced money to aid in proving up.

Q. Now, in that case it appears that Mrs. Skinner conveyed to the Missoula Mercantile Company after proving? A. Yes, sir.

Q. Do you remember how long after proof?

A. It was some time, I don't remember exactly; evidently six or eight months, because, as I remember the proof was made about May of that year, 1899, and it shows that we purchased from the M. M. Co. at this time.

FRANK VOGEL.

(Testimony of Louis Jakways.)

Subscribed and sworn to before me this 16th day of April, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

LOUIS JAKWAYS, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Jakways, where do you live?

A. Ovando, Montana.

Q. How old are you?

A. Forty-two years old.

Q. Are you a member of the firm of Jakways & Faust? A. No, sir.

Q. What is your business or occupation?

A. I am clerking for them.

Q. For whom?

A. Jakways & Faust, in their store.

Q. Where? A. At Ovando, Montana.

Q. How long have you been there employed?

A. About seven years.

Q. Mr. Jakways, what, if anything, do you know of any relation existing between the firm of Jakways & Faust or either member of that firm and R. M. Cobban or Chauncey L. Griswold?

A. No, sir, I have no knowledge of anything.

Q. Any relation existing at all?

A. No, sir, any more than that they purchased some

(Testimony of Louis Jakways.)

supplies there, Mr. Cobban bought some supplies of the firm.

Q. If they did have any dealings concerning any timber lands, as I understand you, you don't know anything about it?

A. No, sir, I had no knowledge of it and had nothing to do with it at all.

Q. What, if anything, do you know about the facts connected with an entry made by one Lelie T. Bryan of a timber and stone claim during the year 1899?

A. I know nothing of it, sir.

Q. What conversation, if any, did you ever have with any person concerning her claim?

A. I never had any conversation whatever.

Q. What conversation, if any, did you ever have with Chauncey L. Griswold concerning her claim?

A. None whatever.

Q. Do you know who Mrs. May Hawthorne is?

A. Yes, sir.

Q. Who is she? A. She is my sister.

Q. Where does she live? A. Lincoln, Illinois.

Q. Do you know whether she took up a timber and stone claim in the neighborhood of Ovando during the summer of 1899?

A. She did.

Q. What, if anything, did you have to do with the making of her entry, Mr. Jakways?

A. I was one of her witnesses.

Q. At the time that she made the proof?

(Testimony of Louis Jakways.)

A. Yes, sir.

Q. What, if anything, do you know of any agreement or promise made by her prior to the time that she made her final proof that she would convey this claim to Mr. Cobban or to anybody else when she had made her proof?

A. I had no knowledge of any such agreement.

Q. Did you ever overhear any conversation between any persons to that effect? A. No, sir.

Q. Did you ever take part in any such conversation yourself? A. No, sir.

Q. What, if anything, do you know about an entry of a timber and stone claim made by one Albert Stewart?

A. It seems to me that I was a witness for Stewart and Opsata.

Q. What, if anything, do you know about any such agreement or promise made by either of those gentlemen prior to the time that they made final proof?

A. No, sir, I don't know anything.

Q. What conversation, if any, did you ever have with any person concerning the sale of the claim of Stewart or Opsata prior to the time they made final proof?

A. I had nothing to do with it and had no conversation with anyone regarding it.

Q. What, if anything, do you know, Mr. Jakways, about Mr. Cobban having left money with the firm of

(Testimony of Louis Jakways.)

Jakways & Faust to be supplied to persons who desired to prove up on timber claims?

A. I know nothing about any such occurrence.

Q. What, if any, conversation did you participate in, or overhear, between Mr. Cobban and any of the members of the firm of Jakways & Faust to the effect that whatever moneys they would advance to entrymen or entrywomen for the purpose of making entries under the Timber and Stone Act, Mr. Cobban would reimburse them.

A. I never heard any such conversation.

Q. State whether you ever heard any conversation to that effect between either of the members of the firm of Jakways & Faust and Mr. Griswold.

A. I never did.

Q. You may state whether Mr. Griswold ever said to you or any of the members of the firm of Jakways & Faust, in your presence, that they would advance money to persons who desired to make entries under the Stone and Timber Act, and that they could say to them that Mr. Cobban would give them $100 over and above expenses for the claim after they had proved up.

A. I did not exactly understand that question.

Q. (Question read.)

A. No, I don't ever remember having heard any such conversation regarding claims.

Q. Mr. Jakways, state whether you were ever out at or about the timber claim taken up by Mr. Stewart, in company with Mr. Cobban and Mr. Griswold?

(Testimony of Louis Jakways.)

A. No, sir.

Q. And Mr. Stewart? A. No, sir.

Q. And of course, you then did not hear any conversation between those gentlemen concerning that claim?

A. No, sir.

Q. Do you know one Dr. E. W. Hoyt, residing in that neighborhood?

A. Yes, sir, I am acquainted with him.

Q. What, if anything, do you know, Mr. Jakways, about the acquisition or transfer of his claim?

A. I know nothing of it.

Q. Or his wife's claim?

A. Nothing at all about either claim.

Q. Did you ever talk with anybody about that?

A. No, sir.

Q. You had no conversation with Mr. Griswold concerning the claim of these parties? A. No, sir.

Q. You were a witness for Mr. Opsata and Mr. Stewart, I believe.

A. I believe so, yes, sir.

Q. And what, if any, facts do you know of that pointed to the conclusion that either of these gentlemen had prior to the time that they had made final proof, entered into an agreement or made any promise, expressed or implied, that they would convey this land to Mr. Cobban after they had made proof upon it?

A. If they had, I knew nothing of it; I had no knowledge of any such transaction.

Q. Do you know Albert Muchmore?

(Testimony of Louis Jakways.)

A. Yes, sir.

Q. And Guy W. Muchmore? A. Yes, sir.

Q. And Oliver E. Muchmore? A. Yes, sir.

Q. Elizabeth A. Muchmore? A. Yes, sir.

Q. What, if anything, do you know concerning the facts of the entries made by any of these people under the Timber and Stone Act, or the transfer of their claims subsequently?

A. I know nothing of them.

Q. What conversations did you ever have with Mr. Griswold or anyone else concerning the claims of these persons? A. None whatever.

Q. Do you know Mr. Doney, who lives in that neighborhood? A. Yes, sir.

Q. And his wife? A. Yes, sir.

Q. What facts do you know of in relation to the entry made by these people or the transfer of their claims made under the Timber and Stone Act?

A. I have no knowledge; I know nothing about them.

Q. What conversation, if any, did you have with any person concerning them? A. None whatever.

Q. Mr. Jakways, do you know the man, Chauncey L. Griswold, that you spoke of? A. Yes, sir.

Q. How long have you known him?

A. Well, I got acquainted with him, I think, in 1899, perhaps a year before that; I cannot say exactly.

Q. Where was he living at that time?

A. Clearwater.

(Testimony of Louis Jakways.)

Q How far away from where you live is that?

A. Oh, it is 16 miles, I believe it is called.

Q. And you may state how frequently, if at all, he was at Ovando, where you lived?

A. Well, he did not come there often until he was connected with the timber business there, inspecting timber, and he was up there then occasionally, probably an average of once a month during the summer, and would stay a week at a time sometimes.

Q. Did you ever go to Clearwater yourself?

A. No, only on my way to Missoula.

Q. It is on your way, is it? A. Yes, sir.

Q. Sixteen miles in your country is not considered very far, is it?

A. No, it is not considered far.

Q. Neighbors live quite a distance apart, I believe, in that section? A. Yes, sir.

Q. Do you know what is the general reputation of Chauncey L. Griswold in the neighborhood in which he lives for truth, honesty and integrity, Mr. Jakways? I ask you first if you know what it is?

A. Well, I think I do, pretty well.

Q. What is it, good or bad?

A. From remarks that I have heard the neighbors make, it is bad.

Q. Do you know one L. A. Wells, who lives in that neighborhood? A. Yes, sir.

Q. How far away from Ovando does he live?

A. Eight miles.

(Testimony of Louis Jakways.)

Q. How long have you known him?

A. About six years.

Q. Does he occasionally come to Ovando?

A. Oh, yes, he comes there often.

Q. Do you ever have occasion to go into the immediate neighborhood in which he lives? A. Yes, sir.

Q. Do you know what the general reputation of L. A. Wells is in the neighborhood in which he lives for truth and veracity? A. It is very bad.

Cross-examination.

(By Mr. MAYNARD.)

Q. You say you are a clerk for your brother?

A. Yes, sir.

Q. Who is a partner of the firm of Jakways & Faust?

A. He is a partner, yes, sir.

Q. You are engaged in the general merchandising business up in the woods, are you not?

A. Yes, pretty nearly up in the woods; it is 40 miles from the railroad, and there is a good deal of timber around it.

Q. How much of a place is it at Ovando; how much of a place is Ovando?

A. Oh, it is a small place; I don't suppose there is over 40 or 50 inhabitants. The country is settled up around there, though, pretty well.

Q. What was your sister doing out there in the year 1899? A. Visiting my brother's folks.

Q. How long did she stay there?

A. Nearly three months.

(Testimony of Louis Jakways.)

Q. Had she ever been there before or since?

A. No, sir.

Q. How old a girl is she?

A. She is about 40.

Q. A married woman? A. A married woman.

Q. She lives with her husband at Lincoln, Illinois?

A. Yes, sir.

Q. What is her husband's business?

A. He works for the Chicago and Alton Railroad there; he is agent.

Q. At Lincoln? A. Yes, sir.

Q. Do you know who Cora Faust is?

A. Yes, sir.

Q. Who is she?

A. She is the wife of H. J. Faust, the member of the firm of Jakways & Faust.

Q. How many Fausts are partners in the concern, more than one? A. No, sir.

Q. And it is your brother, H. J. Faust, and Cora is his wife?

A. No, my brother is not H. J. Faust; my name is Jakways.

Q. I beg your pardon. Did you take up a claim, too?

A. Yes, sir.

Q. Who did you sell your claim to?

A. R. M. Cobban.

Q. How much did you get for your claim over and above the purchase price of the land and expenses?

(Testimony of Louis Jakways.)

Mr. WALSH.—Objected to as not proper cross-examination.

A. I got a price that was satisfactory to me.

Q. How much was it?

A. I believe it was $1,500.

Q. How much did the land cost you with the expenses? A. About $500.

Q. Do you remember how long a time elapsed after you proved up and before you sold to Cobban?

A. Let's see—it must have been about four months; between three and four months.

Q. Do you remember when you proved up?

A. I filed on April 15th; it must have been some time in June, I think.

Q. 1899?

A. Yes, sir. I filed April 15th, and it takes sixty days, doesn't it?

Q. Well, that would be about the 16th of June.

A. Yes, somewhere between the 15th and 20th.

Q. That you proved up? A. Yes, sir.

Q. And you sold to Cobban four months thereafter?

A. Yes, sir, three or four months, I would not be sure or positive about it now.

Q. Who did you get the money from that you bought the land with?

A. Jakways & Faust furnished me the money.

Q. Whose money was it?

Q. It was their money.

Q. How do you know that?

(Testimony of Louis Jakways.)

A. Well, I asked them to loan me the money, and they did so; I supposed it was their money; I don't know, of course.

Q. Well, you said it was their money and now you say you supposed it was their money, but you don't know. Which do you desire to have stand as your answer to my question.

A. Why, it was their money that they loaned me.

Q. What did you mean a second ago when you said you didn't know whether it was their money or not?

A. Well, I am satisfied that it was their money, that is the reason I say so; I am satisfied in my own mind that it was their own money. They did not have anybody else's money to loan that I know of.

Q. Now, you are not a member of the firm?

A. No, sir.

Q. And you said you you did not know a great many things in answer to the questions put to you by my brother, Mr. Walsh? A. No, I didn't.

Q. There are a great many things that are true that you don't know, aren't there? A. Oh, yes.

Q. And so it may be true that Mr. Cobban may have left money there or made arrangements for money to be advanced for his benefit by Jakways & Faust, and you not know it, isn't that true?

A. If it is I did not know anything about it.

Q. It may be true just the same, may it not?

A. Well, I don't know—I don't say—I have no knowledge of any such transaction.

(Testimony of Louis Jakways.)

Q. How much money did you borrow from the firm of Jakways & Faust?

A. Well, about $500; I think it ran a little over that?

Q. Do you know where your land is situated?

A. Oh, yes.

Q. Whereabouts was it?

A. It was on section 4, the southwest quarter, township 15 north, range 12 west, I believe.

Q. Who told you about this claim?

A. I went out and went over it myself.

Q. Who told you about it in the first place?

A. My brother went with me.

Q. He is here in the room now?

A. Yes, sir.

Q. The first time that you went there the partner brother was with you? A. Yes, sir.

Q. He took you to the location, did he not?

A. Yes, sir, in March, 1899.

Q. Who went with you besides your partner brother?

A. Nobody; we were together, he and I.

Q. How far is it from Ovando?

A. Oh, it must be 10 miles, 10 or 12 miles.

Q. What time did you leave the store?

A. In the morning.

Q. What time in the morning?

A. It was very early.

Q. What time did you get back?

(Testimony of Louis Jakways.)

A. We got back in the evening.

Q. What did you do out there?

A. We ran out the lines of the sections and went over the sections to pick out the best timber, the quarter section that had the best timber on it; we were around there all day.

Q. You had never been there before on this particular piece?

A. Well, I might have been; I have been out through that country a good deal, hunting, and I think I had been on that land, too.

Q. Of course. I don't deny but what you may have driven in that neighborhood and in hunting you may have passed through, but you had never been there for the purpose of looking up this location before?

A. No, sir.

Q. And never were there since, were you?

A. No, I was never there since.

Q. Was this before or after your sister's location?

A. Before.

Q. How long before?

A. It must have been about three or four months.

Q. Where did you make your filing?

A. At Helena.

Q. Who came there with you?

A. Mrs. Faust and my brother.

Q. At the time you filed? A. Yes, sir.

Q. That is Cora Faust? A. Yes, sir.

Q. Wife of the Faust of the Jakways & Faust?

(Testimony of Louis Jakways.)

A. Yes, sir.

Q. And your brother, the partner?

A. Yes, sir.

Q. Did he make a filing, too? A. No, sir.

Q. Cora filed, didn't she? A. Yes, Cora filed.

Q. And you filed? A. I filed.

Q. And you say your brother did not file?

A. No, sir.

Q. Had he filed before that?

A. Yes, I think so; I don't know.

Q. Now, all the money that was paid for your location was advanced by Jakways & Faust, was it not?

A. Yes, sir.

Q. Did you give them any note or mortgage?

A. No, sir.

Q. Where were you when you deeded to Cobban?

A. I was at Ovando.

Q. Was Cobban there? A. Yes, sir.

Q. At the time you deeded to him?

A. Yes, sir.

Q. Had you seen him prior to the time that you deeded?

A. Oh, yes, he had been there two or three times.

Q. What had he been doing there?

A. Looking after his timber interests; he was buying timber.

Q. You don't say that he had been up there two or three times before this, do you, before you sold?

A. Oh, yes, he had been there, I think, at least

(Testimony of Louis Jakways.)

twice, and I don't know but more; I do not remember exactly the number of times he was there, but he was there two or three times during that summer, at least.

Q. When did you first speak about selling to him?

A. I think it was along in September some time that the matter was first brought up, August or September, I would not be sure. It is pretty hard to remember any date back that far, you see; that is three years ago.

Q. You won't swear but what you sold to Cobban within a week after you proved up, will you?

A. Oh, no; it was longer than that, I know.

Q. You swear to that positively, that it was more than a week after you proved up and got your receiver's duplicate final receipt for your location before you deeded to Cobban?

Q. Will you say it was two weeks?

A. Yes, sir.

Q. A month?

A. I will swear to two weeks.

Q. Will you say it was a month?

A. Yes. You can make it two.

Q. I don't want to make it anything. You are making this business.

A. Well, I am sure of that; I think it was in August or September that I sold.

Q. I don't want to know what you think; I want to know what you are now willing to swear to was the

(Testimony of Louis Jakways.)

limit of time after you proved up before you sold to Cobban? Will you swear that it was two months?

A. Yes, sir.

Q. Did you receive any money from Mr. Cobban for your deed directly?

A. Well, this business—my brother transacted the business with Mr. Cobban for me. I got the money, of course, through them, through Jakways, my brother. He did the business with Mr. Cobban for me; he had all the transactions for selling that claim of mine with Mr. Cobban, and he received the money and gave me credit for it on the books of the firm. That is the way the transaction was made. Of course, it was with my consent. He told me that Mr. Cobban had offered such a price for the timber and asked me if that was satisfactory, and if it was, that he would go ahead and have the deed drawn up, and I told him all right, it was satisfactory, to go ahead, and he did so.

Q. So, then, you did not pay out one dollar of your own in the matter of your location from beginning to end?

A. Well, I had some money coming to me. I was employed by them, you see; I was working for them, and I had a certain credit, but I did not have enough to prove up with, and they let me have the money and charged it to me on the books, and when the claim was sold the money went right into my credit on the books of the firm, as my money, and the books will show that.

Q. It is still true, then, as I ask you, that you did

(Testimony of Louis Jakways.)

not pay out any cash, one dollar of your own, except, as you say, it was charged up on the books against you?

Mr. WALSH.—We object to this, because it is not true.

A. Why, the money is my money, because I borrowed the money from the firm.

Q. But you say you gave neither a note or a mortgage nor anything?

A. No. I was working for them, and they had confidence enough in me that I would pay them and let me have the money.

Q. And your brother had entire charge of the business, and when he sold to Cobban and got your signature, you say that there was a credit given you on the books of the concern? A. Yes, sir.

Q. Have you ever received any money on the strength of that credit? A. Yes, sir.

Q. How much?

A. I think all of it; I know I have the credit for all of it, and have had the use of all of it, every dollar.

Q. How much was it?

A. About $1,000 after the expenses and everything was paid; in the neighborhood of $1,000.

Q. You say the books of the firm will show the credit? A. Yes, sir.

Q. Now, then, if it is in the neighborhood of $1,000, what do you mean by that?

A. Well, it is either over or under, a little, or it may be exactly $1,000.

(Testimony of Louis Jakways.)

Q. I am gratified to know that it is over or under.

A. Well, that would be near $1,000.

Q. That is as near as you can give it?

A. It seems to me that it was exactly $1,000, but I don't remember exactly what the entry was. You see, the expenses were brought in and the amount that was gotten out of it, and it was all figured in, and I don't remember exactly to dollars and cents just what it did amount to.

Q. If you don't know how much the credit was, how do you know that you had the use of it?

A. Oh, well, I got reports from the books there. I have an account with the firm, and I can get about how I stand there almost any time. I have been working for them right along and getting a salary, and drawing money. It is a general business transaction between an employee and an employer, and it all shows up on the books.

Q. Well, now, I want you to tell me how you ever used this credit?

A. Well, how I used it, you mean?

Q. Yes.

Mr. BICKFORD.—We object that it is not proper cross-examination and does not relate to anything brought out in the examination-in-chief, and further that it is irrelevant and immaterial, being the personal matter of the witness.

A. Well, in various ways.

(Testimony of Louis Jakways.)

Q. Give us the first way, now.

A. Well, I took a trip back east and used some of it that way.

Q. Where did you go?

Mr. BICKFORD.—The same objection.

A. To Chicago.

Q. How long were you gone from home?

Mr. BICKFORD.—The same objection.

A. About six weeks.

Q. Now, I want you to be particular in answering my questions.

A. I think it was about six weeks, five or six weeks, that is right.

Q. Where did you go besides Chicago?

Mr. BICKFORD.—The same objection.

A. I went to my home.

Q. Down to Lincoln?

Mr. WALSH.—We object further for the reason that the witness has stated that the books will show just exactly the state of his account, and the books are the best evidence therefor of the condition of the account, and we say to counsel now that we will produce the books so that he can save this extensive cross-examination, and if we do not, we will call this witness back for further cross-examination, so that counsel can go into those matters.

Mr. MAYNARD.—While those are wonderful books, I have no doubt, I know that the books of Jakways &

(Testimony of Louis Jakways.)

Faust's account do not show upon their face the expenditures that this man has made of his own, which count for the profit which he claims to have made in this land deal.

Mr. BICKFORD.—I move to strike out the statement of counsel for the reason that it is argumentative, and for the further reason that it states a fact as within the knowledge of counsel, counsel not being under oath it is not pertinent or proper for him now to testify.

Q. I want you to tell me how much money you spent on this trip, that was the first item of this credit?

Mr. BICKFORD.—The same objection that was made to the former question with reference to the expenditure of money.

A. I couldn't tell you exactly, sir.

Mr. WALSH.—We object to this question also because the witness has not stated that that is the first item of the credit.

Q. Do you know how much money that trip cost?

A. Oh, I know pretty nearly, but I cannot tell you exactly.

Q. Very well, give us your best judgment of the matter, your best recollection of it?

Mr. BICKFORD.—The same objection.

A. About $400.

Q. When was that trip made?

A. 1900, I believe it was.

(Testimony of Louis Jakways.)

Q. You know, don't you, absolutely when you went east? A. I think it was in September, 1900.

Q. That was when you left Ovando?

A. Yes, sir.

Q. When did you return to Ovando?

A. I got back in the fore part of November.

Q. Can you name any other places that you went to except Chicago and your home in Illinois?

Mr. BICKFORD.—The same objection.

A. I visited my sister at Lincoln, Illinois.

Q. Did it cost you anything while you were visiting your sister? A. No, sir.

Q. And did it cost you anything while you were visiting at your home?

Mr. BICKFORD.—The same objection to all of this.

Mr. MAYNARD.—Make all the objections you are a mind to.

The EXAMINER.—Well, they have a right to make the objections and you have a right to reply without making any comments on the facts.

Mr. MAYNARD.—It is so ridiculous, such objections as that; that is all.

The EXAMINER.—Well, it all goes into the record.

Mr. MAYNARD.—I am glad to have it in the record.

A. No, it didn't cost me anything at home.

Q. Nor while you were visiting your sister?

Mr. BICKFORD.—The same objection.

(Testimony of Louis Jakways.)

A. No.

Q. What expenses did you have in Chicago?

Mr. BICKFORD.—I was at the hotel in Chicago and running around Chicago and visiting in Chicago.

Q. And your expenses were what?

Mr. BICKFORD.—The same objection.

A. Traveling expenses and hotel expenses. I was there for pleasure.

Q. And your fare from Ovando to Chicago and return?

Mr. BICKFORD.—The same objection.

A. Yes, sir.

Q. Now, name your second item.

A. Well, the most of the balance of it remains in the firm; the firm have it there credited to me on their books any pay me for the use of it.

Q. Have they given you a note? A. No.

Q. Have they ever paid you any interest?

A. Well, I presume they have; they have agreed to and I presume they have. I think the books will show that they have.

Q. Whether the books show it or whether it is on the account you do not know?

A. Well, no, I haven't looked into it. I suppose it is true, though; they said they would, and I took their word for it.

Q. How much are they going to pay interest on?

A. Well, whatever there is there, of course.

Q. You said you looked at the books a little while ago, and did you not ascertain then how much your credit was?

(Testimony of Louis Jakways.)

A. A little while ago? Did I say that I looked at them?

Q. I understood you to, that you were looking at the books there once in a while and that you could find out exactly the state of your account at any time?

A. I can, yes, but I have not looked at the books.

Q. When did you look at the books last?

A. It has been probably a year or more ago since I looked at my account.

Q. What was your account then?

A. I think it was that I had a credit of something over $900, between $900 and $1000. The books were fixed up every year, you know, and I know how I stand then.

Q. That was last January then, a year ago last January?

A. Well, yes. It is supposed to be up to the 1st of January.

Q. You say you had your salary then?

A. No, no, I leave it right there, and whenever I want any money I draw it.

Q. Do you know how much is owing you for salary there now? A. No, I don't.

Q. You have no idea?

A. No, I haven't; I haven't any idea how I stand there now.

Q. Don't you know whether the firm pays you for salary $1,000 or over or under?

A. I know what the salary is.

Q. What is the salary?

(Testimony of Louis Jakways.)

A. I have known that I have drawn money right along during the year and have had merchandise, but I have not looked at the books to see how we stand.

Q. Are you a married man? A. No, sir.

Q. How much salary do you get?

A. I get $50 a month and board.

Q. Now, do you say you don't know anything about your standing on the books of the firm now as to salary?

A. I do not.

Q. How long have you been receiving $50 a month?

A. Oh, four or five years.

Q. Can't you state more definitely than that?

A. No, sir, I can't; I can't tell exactly when I did begin to get $50 a month.

Q. What was it before you got $50 a month?

Mr. WALSH.—That is altogether immaterial and certainly not proper cross-examination; it is an inquiry that counsel has no right to go into at all and ought not to seek to do so.

A. Why, I didn't get anything, I believe, only my board.

Q. The first four or five years you got nothing, and the next four or five years you got $50 a month and board, and now you swear that you don't know anything about your standing on the books as to salary?

Mr. WALSH.—There is no question asked now.

Q. Is that so?

Mr. WALSH.—We object to that as not a proper way

(Testimony of Louis Jakways.)

of examining this witness at all, because he does not know—the question is so indefinite as to what is so that he cannot know what is asked.

Q. In the light of the statement that you have made to me now, do you now wish to be understood as swearing that you don't now know anything about what your credit is on the books on your salary account?

A. I do not.

Q. Whether it is $500, or not?

A. I haven't looked at the books for a year.

Q. Don't you know that you haven't got a credit on the books of the firm of Jakways & Faust for $500, do you, on account of salary? A. I don't know.

Q. Will you say that you have?

A. Why, no, I am not in a position to; I don't know how my standing is; I don't know what the books show.

Q. You don't know whether you have got any credit there or not, do you? A. Well, no, I don't know.

Q. Now, did your sister, May Hawthorne, did she have any money when she came out to visit you and your brother to buy land out here? A. I don't know.

Q. Did you know of her having any money?

A. I do not.

Q. Do you know of her owning any real property anywhere? A. I do not, no.

Q. Do you know of her having any personal estate anywhere?

A. They have a home in Illinois, which they rent, and

(Testimony of Louis Jakways.)

they have furniture and personal property, household goods, and that is all I know of.

Q. Do you know whether the title of the household goods in her home in Lincoln, Ill., is in your sister or in her husband? A. In her husband, I suppose.

Q. Did you go out with her on this location?

A. I was all over it, yes, sir.

Q. With her?

A. No, I was not with her; I was there before, at the time I went over my own I was over all of that section.

Q. On that one day?

A. Yes, over two sections, the most part of it.

Q. Then when your sister came out subsequently to visit you, you told her of this timber that was growing up there? A. No, I didn't tell her.

Q. Who did?

A. I don't know; I think probably my brother did.

Q. You never went out with her, then, when she came there? A. Out on the claim with her?

Q. Yes. A. No, I did not.

Q. Who did go with her?

A. I don't know; I think my brother did, though. I was at the store and she was visiting him at the ranch, which is ten miles away.

Q. You know that she conveyed to Mr. Cobban, too, don't you?

A. I don't know that she did; I have no special knowledge of it. I think that she did, though; I didn't see any deed.

(Testimony of Louis Jakways.)

Q. Didn't you ever talk with her about it?

A. I don't remember having any conversation with her regarding timber at all; I didn't see much of her. She was down at the ranch all the time, and I didn't see much of her while she was here.

Q. Do you swear that you did not talk with her at all in regard to the matter?

A. Well, I presume we had general conversation regarding it, when we were going over to file, but I don't remember what the conversation was. It was quite natural that we should talk about it, but I don't remember what she said.

Q. Do you know who was present when the final proofs were made in her case?

A. Why, I was one of her witnesses; I think my brother was present at the time—no, I won't be sure about that. I think Griswold was one of her witnesses.

Q. He was one of yours, too, wasn't he?

A. No.

Q. You and Griswold were her witnesses?

A. Yes, I believe that was it; Griswold and I were her witnesses.

Q. Who were your witnesses?

A. Mrs. Faust and my brother.

Q. Now, then, you came there with your sister, May Hawthorne, both, at the time when she came here to Helena from Ovando to file? A. Yes, sir.

Q. And you were with her at the time when you left

(Testimony of Louis Jakways.)

Ovando and came here to Helena again, sixty days thereafter or thereabouts, to make your final proofs?

A. Yes, sir.

Q. Two trips there and back? A. Yes, sir.

Q. Now, don't you know the purpose for which she made that location, she living in Lincoln, Illinois?

A. Why, to get possession of the timber claim.

Q. And then what to do with it?

A. I don't know; I don't know what her plans were at all.

Q. You never heard her say? A. No, sir.

Q. You never heard your brother say?

A. No, sir.

Q. No talk at any time between yourself and your sister in regard to what she was going to do with her claim after she bought it?

A. No, sir; I never heard any conversation in regard to it at all, what she was going to do with it. She was going to get it and was going on back east.

Q. But she sold it before she went back east, didn't she? A. I think—not that I know of.

Q. You don't know whether she did or not?

A. I am of the opinion that she did not.

Q. Why are you of that opinion?

A. Why, because she went right on east after proving up.

Mr. MAYNARD.—I would like to have the deed of May Hawthorne.

(Testimony of Louis Jakways.)

Q. Did you prove up at the same time that she did?

A. No.

Q. Do you remember when it was that her final proofs were made? A. It was in September, I believe.

Q. Of '99? A. Yes, sir.

Q. Do you remember the date?

A. No, I don't exactly.

Q. Haven't you any way to fix it in your mind now?

A. I could not say positively.

Q. But it was in September, '99? A. Yes, sir.

Q. And after she proved up here in the city of Helena, Montana, she went directly home to Lincoln, Illinois? A. Yes, sir.

Q. You know that?

A. I know that, yes, sir.

Q. Do you know what her husband's first name is?

A. O. A.

Q. His name is Orrin, isn't it?

A. Yes, sir.

Q. He was not here in the State when his wife was here in September, '99? A. No, sir.

Q. You didn't hear anything about a deed being made out here for their joint execution, did you?

A. No, I did not.

Q. You did not see any? A. No, sir.

Q. You did not know of her having a deed when she was in Helena? A. No, sir.

Q. Who had charge of the deed part of the business over in Ovando?

(Testimony of Louis Jakways.)

A. Why, I don't know whether it was done through Faust, but I think that he probably had more to do with it. He had charge of the office, if there was any such thing; Mr. Faust had charge of all of the office work over there.

Q. Have you got a typewriter over there?

A. No, he does his own work; he does his own typewriting.

Q. He has a typewriter there? A. Oh, yes.

Q. He is a commissioner of the United States, isn't he? A. Mr. Faust?

Q. Yes. A. No, sir.

Q. What office does he hold?

A. He is a notary public.

Q. Any other office? A. Postmaster.

Q. Anything else? A. Not that I know of.

Q. Justice of the peace? A. No, sir.

Q. And you say he is his own typewriter?

A. Yes, sir.

Q. Does he draw up deeds for the neighborhood around there? A. Yes, sir.

Q. And has them executed and acknowledged before him as notary? A. I presume so, yes, sir.

Q. Now, you did not see your sister have such a deed in her possession? A. No, sir.

Mr. MAYNARD.—I desire to read into the record at this time from the complainant's exhibit No. 136.

"This indenture, made the 20th day of September, in the year of our Lord one thousand eight hundred and

(Testimony of Louis Jakways.)

ninety-nine, between May Hawthorne and Orrin E. Hawthorne, her husband, of Lincoln, Logan county, Illinois, parties of the first part, and R. M. Cobban, of Missoula, Missoula County, Montana, party of the second part, witnesseth, that the parties of the first part, for and in consideration of the sum of fifteen hundred dollars" conveyed the land described in said exhibit, and the acknowledgment is as follows:

State of Illinois, }
County of Logan. } ss.

On this 20th day of September, in the year 1899, before me, S. W. Becker, a notary public in and for the county and state aforesaid, personally appeared Mrs. May Hawthorne and Orrin E. Hawthorne, her husband, known to me, S .W. Becker, to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my notarial seal, the day and year first above written.

S. W. BECKER,
Notary Public in and for Logan County, Illinois."

Mr. WALSH.—We move to strike that out as not being any testimony.

Q. You did not know that this arrangement—but what this deed was to be drawn here and she was to go directly home from Helena to her home in Illinois and

(Testimony of Louis Jakways.)

get her husband to join with her and sign it and send it back?

A. No, I know nothing about it whatever; I had nothing to do with it.

Q. Who did?

A. I don't know; I don't know anything about it.

Q. Didn't you hear who was attending to the business?

A. No, sir, I heard nothing about it. I did not know anything about it.

Q. Nothing was said by your brother or by your sister as to how this deed was to be executed, and so on?

Mr. WALSH.—We object to this because it has been asked and answered repeatedly.

A. Nothing was said to me regarding it whatever.

Q. You know nothing about this money, either?

A. What money?

Q. That was advanced to pay for her entry?

A. No, I know nothing about it at all.

Q. Your brother had entire charge of that?

A. Yes, sir.

Mr. WALSH.—We object to this testimony, because there is no testimony, so far that any money was advanced to her.

Q. So far as all these claims that my brothers have called your attention to, Mr. Jakways, Alfred Stewart, and Opsata, Elijah W. Hoyt and Charlotte S., his wife, and the Muchmores and the Doneys, you were attending to your business as a clerk?

(Testimony of Louis Jakways.)

A. Yes, sir, I was at the store.

Q. And the executive part of the business was left to the firm? A. Yes, sir.

Q. You have no personal knowledge of the deals that were had between Jakways & Faust and these people?

A. I did not know that there was any deals at all, only their store account.

Q. What did you know about their store account?

A. Well, most of them have accounts there at the store, and I fill their orders and charge their accounts in the regular way.

Q. That is, they were customers of the store?

A. They were customers of the store, yes, sir.

Q. That is the way all the business is done up in that country, isn't it, that most of the ranchers around there have store accounts, that they are trusted by your firm until such time as it is convenient for them to pay?

A. Oh, yes, a good many of them do, yes, sir.

Q. You had no talk with any of these people that your attention has been called to in regard to their taking up these claims? A. No, sir.

Q. You did not know that they had taken up claims?

A. Well, Opsata and Stewart, I might have talked with them, as I was a witness for them; those are the only ones.

Q. Those are the only ones that you were a witness for? A. Yes, sir.

(Testimony of Louis Jakways.)

Q. You might have had a talk with the men that you were a witness for?

A. Well, yes; about their claim and where it was situated and what kind of claim it was.

Q. Who told you about that?

A. That would come up in general conversation only.

Q. Who told you those things?

A. I say that I might have had such a conversation.

Mr. WALSH.—We object. The witness has not said that anybody told him anything, and the question is indefinite, in that it does designate what things counsel asked about.

Mr. MAYNARD.—He referred to it in the preceding question.

Mr. WALSH.—You asked him who told him those things.

The EXAMINER.—Well, just repeat the question; we will settle the matter.

Q. You and Opsata and Stewart might have had such a conversation? A. Yes, sir.

Q. Had you ever seen their land? A. Oh, yes.

Q. When? A. In '99.

Q. Do you remember any of the facts and circumstances connected with your seeing it?

A. Any more than that I was going over that land looking after a claim myself, and happened to be on their land that they filed on, looking for my own.

Q. Now, you say that you had no conversation with

(Testimony of Louis Jakways.)

them or anyone in regard to what they were going to do with the land after they took it up? A. No, sir.

Q. But you say that Mr. Cobban was up in that country, and at your store in looking up his timber claims; now, what was he doing?

A. Well, this was later on that Cobban came up there; I didn't know anything about Cobban at this time.

Q. Did you know anything about Cobban at any time?

A. Well, only that he was up there along later in the season, buying timber as I supposed.

Q. Do you know how he was buying it?

A. No.

Q. You didn't know anything about that?

A. Didn't know anything about that; I had nothing to do with any transactions outside of my own.

Q. And you didn't have much to do with that, did you?

A. Well, I accepted the price and got the credit, that was all.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Jakways, does your sister contemplate coming back to Montana at any time?

A. Why, she might.

Q. She might visit you again, possibly?

A. She might visit again, yes, sir.

Q. Now, do you know, Mr. Jakways, what the state

(Testimony of Louis Jakways.)

of your account was at the time that you made your proof upon your claim, and as to whether you had a credit or whether you were indebted to the firm?

A. I had a credit, yes, sir.

Q. Do you now recall about what it was?

A. Well, I could not state definitely; I know that the firm were owing me something. I had been working for them for quite a while, and had not drawn—

Q. Whatever it was you were charged on the other side of the account with all the expenses attending on the acquiring of this claim? A. Yes, sir.

Q. You were asked by counsel as to whether you gave your note to Jakways & Faust at that time, and you say you did not? A. I did not.

Q. Did they give you their note when they owed you something? A. No.

Q. How did your brother take you to this claim? Did he wheel you there in a wheelbarrow, or take you in a buggy or otherwise?

A. We went out in a sleigh as far as we could go.

Q. Do you remember who drove?

A. My brother drove.

Q. And that is the way he took you to the claim?

A. Yes, sir.

Q. You know that country pretty well, don't you?

A. Yes, sir.

Q. How did you become familiar with it?

A. Well, in going over it hunting and fishing is the way I became familiar with it.

(Testimony of Louis Jakways.)

Q. Has your brother any more intimate acquaintance with the particular section of country than you have? A. Yes, I think he has.

Q. How does he acquire it?

A. Well, he is connected with the land work, and has been there ever since he has been there.

Q. Now, do you know whether any of these visits that Mr. Cobban made to Ovando were made prior to the time that you made your final proof or not?

A. I don't think he was ever there before I filed; I never saw him there.

Q. In your account with Jakways & Faust, do you have a separate salary account with them and an interest account and an account for timber claims that you might sell to them, or is it all one account?

A. It is all one.

Q. You said something about their having promised to pay you interest upon the balance. What is the fact about that?

A. Well, they did. My credit was becoming quite large there, that is, my salary going in every year, and the question came up—I raised the question myself, that I thought I ought to have something for that money that they were using of mine right along there. It amounted up pretty well, you know, on the books with one thing and another, and they were getting the benefit of it, and it just stood there as a credit, and I raised the question and said that I ought to have something for the use of it, and they said yes; they agreed

(Testimony of Louis Jakways.)

with me, and they said that they would allow me ten per cent.

Q. Now, when your attention was last called to the account and the balance, about what was the balance in your favor?

A. It was between nine and ten hundred dollars.

Q. And when was that?

A. That was January, 1901, that is, up to the 1st of January.

Q. Then, as I understand you, you don't know now just exactly what the balance is? A. No, I don't.

Q. Well, judging from the expenditures that you know you have made since that time, what have you to say as to whether you have or have not a credit balance there now?

A. Why, I have, I think, a credit balance.

Recross-examination.

(By Mr. MAYNARD.)

Q. In 1899, when you bought this land, did you have any property of your own of any kind?

A. No, sir.

Q. You did not? A. No, sir.

Q. I forgot to ask you, to call your attention to your testimony relative to Mr. Griswold. You say that that Clearwater country is some sixteen miles away from Ovando?

A. That is, Clearwater postoffice.

Q. And that you got acquainted first with Mr. Griswold in 1898 or '99?

(Testimony of Louis Jakways.)

A. I think about that time, yes, sir.

Q. Where did you form his acquaintance?

A. At Ovando.

Q. Did you form his acquaintance previous to his coming to Ovando in connection with this visit of looking up claims for Mr. Cobban?

A. Yes, I did meet him before that time.

Q. Where? A. At Ovando.

Q. How long before?

A. Well, I don't know exactly, but I know I had met him once or twice before he came up there looking after that timber; I remember of his having been up there and that I had met him.

Q. Let us not misunderstand each other. Once or twice before he came up to Ovando in connection with Mr. Cobban's matter, you had met him?

A. I had met him, yes, sir.

Q. What were the circumstances of the meeting?

A. Oh, nothing particular; he just came to town there and came in the store and I had an introduction and had a formal acquaintance with him.

Q. Came into the store as a stranger and you were introduced to him? A. Yes, sir.

Q. You had no acquaintance with him before that time? A. No, sir.

Q. And then do you know what year that was?

A. I say it was, I think, in 1898.

Q. Did anything happen between the introduction

(Testimony of Louis Jakways.)

in the store, as you now have stated, and his coming there in conection with the Cobban matter?

A. No, not between us, nothing happened.

Q. Had you heard anything against him between those two dates, between the time that you met him first coming to Ovando and his coming to Ovando in connection with this business?

A. I don't remember about having heard anything.

Q. Then he was working there during the summer and fall of '99? A. Yes, sir.

Q. And at that time you had not heard anything against him? A. At this time?

Q. In '99, that is what I say?

A. Oh, nothing particular that I can recall now, any more than you can hear most anybody up there in speaking of Griswold, roast him, that is all.

Q. Shortly thereafter, in 1900, he commenced suit against Mr. Cobban. You knew that, didn't you?

A. Yes, I read of it in the papers.

Q. Had you ever heard anybody say anything against Mr. Griswold previous to his commencing this suit against Mr. Cobban?

A. I cannot recall anything that I heard said previous to that time.

Mr. MAYNARD.—I now move to strike out all of the testimony of this witness relative to what he said for or against Mr. Griswold's reputation, as it affirmatively appears from the examination of the witness that he absolutely knows nothing whatever in regard

(Testimony of William J. Kendall.)

to the matter upon which he was called by counsel on the other side on that part of the case.

Subscribed and sworn to before me this 16th day of April, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

WILLIAM J. KENDALL, after being duly sworn as a witness for defendant testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. What is your name?

A. William J. Kendall.

Q. Where do you live?

A. I live in Missoula.

Q. How long have you lived in Missoula?

A. About fifteen years.

Q. What is your business? A. Lumbering.

Q. How long have you been engaged in the lumbering business? A. About twelve years.

Q. Have you been engaged in that business ever since you have lived in Missoula?

A. Yes, in various ways.

Q. Where are you now engaged in the lumbering business? A. In Seattle.

Q. Are you engaged in any lumbering operations in Montana at the present time? A. No, sir.

Q. In 1899 where were you engaged in business, what were you doing?

(Testimony of William J. Kendall.)

A. I was engaged in Missoula and in Ravalli County.

Q. Whereabouts in Missoula County were you conducting timber operations?

A. In Hell Gate Canyon, Missoula County, and along the Bitterroot valley in Ravalli County, between Hamilton and Missoula.

Q. Now, at that time, as I understand you, you were running mills in both of those places?

A. Yes, sir.

Q. During the summer of '99 did you purchase any timber land which had been entered under the Stone and Timber Act? A. I did.

Q. I will ask you to state from whom you purchased them?

A. Well, it would be hard now for me to give you the names of any particular ones at present.

Q. But you were during that season engaged in business purchasing timber when you thought it was advisable so to do? A. Yes, sir.

Q. As I understand you, you couldn't give me the names of any of those from whom you purchased timber?

A. Not off-hand here, I could not, no, sir.

Q. I will ask you to state whether or not there were any offers of timber land made to you during that time, from any person, and if so, from whom?

A. I had offers from timber from Mr. Cobban.

Q. Where were those timber lands located?

(Testimony of William J. Kendall.)

A. In the Blackfoot Country, on the Blackfoot River, in that district.

Q. When was it that these offers were made to you?

A. I think it was about August, sometime about the last of August or the first of September, along there somewhere.

Q. What was the nature of the offer, and what dealings did you have with Mr. Cobban with reference thereto?

A. Well, he simply gave me ten days to look over the timber, that is, he offered to me with a ten days' option, in order to know whether I would want to buy it or not. I never had any history of the timber, that is, the records of the location of it or anything of that kind; told him that I didn't know anything about it, but that I would buy the timber after looking it over if I thought I wanted it, but I never did look the timber over, and when the time was up I went to him and told him I didn't believe that I wanted the timber, and didn't want anything to do with it, didn't want any description of it, that it would be wasting time to make out a description or give it to me because I did not care to buy the timber at the price.

Q. What was the price?

A. He wanted $1.50 a thousand.

Q. Did he at the time when he made this proposition to you to sell you the timber furnish you with any written description of the land or an estimate of the amount of timber that was on these lands?

(Testimony of William J. Kendall.)

A. No, and I didn't ask for it. I told him that I would look the matter up and see whether I wanted to go into the deal, and before going into any further details or making out any description, that I would let him know, and he gave me ten days.

Q. Were you acquainted with the timber land on and adjacent to the Blackfoot River at that time?

A. Well, I have not much knowledge of the timber on the Blackfoot.

Q. You have been up the stream, I suppose?

A. Oh, yes, I have been up the stream.

Q. And have a general knowledge of the timber lands lying adjacent thereto?

A. Well, I have, yes, just as a passerby and an observer of timber lands.

Q. What have you to say as to where these lands that were offered to you by Mr. Cobban are situated?

Mr. MAYNARD.—I object to this specific question as entirely immaterial and irrelevant to this issue, and further I object to the question as leading, and calling for information from the witness when the witness has at least twice, in this record already sworn that he knows nothing whatever of any land that Mr. Cobban was talking with him about, that he proposed to sell to him, that he had no list, that he had nothing, that during the ten days' option he was not furnished with a list and Mr. Kendall informed him that he did not want to know anything and did not want to have

(Testimony of William J. Kendall.)

anything to do with it, and now counsel askes this leading question when it affirmatively appears from his own witness that the witness knows nothing whatever about the land.

A. Well, I have went up the Blackfoot River, I have went up there a number of times and have some history of the land lying near the river, between Mr. Cobban's land and the river, and knowing pretty near the distance that that timber was from the river, I considered his price entirely too high from the location of the timber from what knowledge I had of the river and the country from passing through it. I did not think it necessary, or I did not feel so that I wanted to entertain the proposition any further and put him out, so I came to him and stated to him that I would not have anything further to do with it at that price.

Q. Where were these lands that were mentioned by Mr. Cobban?

A. They were on the Blackfoot River.

Q. There was no mention of any lands any other place except on the Blackfoot River, was there?

A. No, sir, Blackfoot River was the only land that he offered me for sale.

Q. Do you know C. L. Griswold?

A. I know him, yes, sir.

Q. How long have you known him?

A. I have known him I think about six years, I should think between five and six years.

(Testimony of William J. Kendall.)

Q. Whereabouts has he been since you have known him?

A. Well, he has been in Missoula and Ravalli County; I first met him in Ravalli County.

Q. Do you know his reputation in the community in which he lives for truth, honesty and integrity?

A. I would say that it was not very good, that is, what I have heard of it in a general way of speaking; I don't consider it very good myself.

Q. You have had no deals with him or any conversation with him concerning Mr. Cobban's transactions, have you? A. No, sir, I have not.

Cross-examination.

(By Mr. MAYNARD.)

Q. You say that you are living in Seattle now?

A. Yes, sir.

Q. How long have you lived there?

A. Well, I am not living in Seattle; my business is there, I am doing business there.

Q. What is your business there?

A. Lumbering, sawmills.

Q. A sawmill at Seattle? A. Yes, sir.

Q. Where are you living?

A. I am living at Missoula at the present time; my home is there.

Q. How long have you been doing business in Seattle? A. About three months.

Q. What were you doing before you went to Seattle? A. I was in the lumber business here.

(Testimony of William J. Kendall.)

Q. Where?

A. In Missoula and Ravalli County.

Q. Have you sold out your interest there?

A. Yes, sir.

Q. How long were you engaged in business in Ravalli County?

A. Well, in Ravalli and Missoula County together for about twelve years.

Q. Continuously, had a sawmill?

A. Well, sawmill and logging together.

Q. Did you have a sawmill? A. Yes, sir.

Q. Where? A. Ravalli and Missoula County.

Q. When did you sell them?

A. I sold them all three months ago, about, sometime in 1901.

Q. How long have you known Mr. Cobban?

A. I think about since about '99.

Q, You had no acquaintance with him previous to that time?

A. No, sir, I had heard of him, but never was acquainted with him or had any business with him.

Q. You formed his acquaintance at once after his moving down to Missoula from Butte, then?

A. Yes, sir.

Q. Did you have any business dealings with him there?

A. Well, that is the only business I had with him; was that transaction in regard to the timber.

(Testimony of William J. Kendall.)

Q. That is the only business you ever had or that you ever discussed with him? A. Yes, sir.

Q. And the entire extent and scope of that one single business transaction with Mr. Cobban was the fact that he spoke to you about buying some timber land from him? A. Yes.

Q. Do you know when that was?

A. It was along the last of August or the 1st of September; along there somewhere, I can't just remember the time because I had no dates—I had no written option or anything of that kind; it was along in the last of August, or the first part of September, or somewhere as near as can recollect.

Q. Of '99? A. '99, yes, sir.

Q. How do you fix the year?

A. Well, I can come somewhere within a year, I guess I can fix the year; I can fix the year all right. I know it was in '99—I think it was in '99—I believe that that is the year '99.

Q. But sometime, whenever it was, Mr. Cobban came to you and spoke to you about buying from him?

A. Yes, sir.

Q. Did you know at the time that he had been engaged in the land business for years preceding that time?

A. No, I didn't know anything about it; I didn't know how long he had been in the business.

Q. You didn't know how extensive his dealings were? A. I did not.

(Testimony of William J. Kendall.)

Q. You did not know how many counties he had been working in? A. No, sir.

Q. Nor how many forms or methods he had employed in obtaining Government timber?

A. No, sir, I did not.

Q. And simply as a stranger, then, he came to you and spoke to you in regard to buying some land that he had for sale or might have for sale? A. Yes, sir.

Q. Which was it?

A. Well, it was land that he had for sale, had title to it, and as far as his title was concerned, I had no reason to doubt it, that it would be all right.

Q. Whereabouts was it that you saw him?

A. Missoula.

Q. Did you ever make an appointment to see him?

A. Yes, sir, at his office.

Q. You went to his office? A. Yes.

Q. That was the first time you had ever been in his office?

A. No, I believe I had been in there before, but never had happened to meet Mr. Cobban, down in his office.

Q. Were you ever there after that? A. Yes.

Q. How many times?

A. I believe once afterwards.

Q. So that it was twice in your life that you were ever in Mr. Cobban's office when you saw him?

A. Yes, I believe it was twice that I went in there, that I recollect of being in there when I met him.

(Testimony of William J. Kendall.)

Q. And the first time as I understand it, he spoke to you about your purchasing the land? A. Yes.

Q. And he gave you a ten days' option?

A. A ten days' option.

Q. Did you pay anything for it? A. No, sir.

Q. He just gave you ten days to think it over?

A. Yes, sir, ten days to look over the timber and see what I thought about buying it. I was in the market for buying timber at that time.

Q. Ten days to look it over?

A. He gave me ten days to make up my mind whether I wanted the timber or wanted to entertain his proposition in any way.

Q. Where did you spend that ten days?

A. I spent it around my own business, around the mills.

Q. You did not make a visit to the Blackfoot country or any other place?

A. No, sir.

Q. Relating to this Cobban matter?

A. No, sir, I did not think it necessary to look over the timber.

Q. Neither at the time that you were there in the office, nor at any time during the ten days did he furnish you with any abstract or with any statement containing the description of the land?

A. No, sir, I didn't ask for it, nor want it at the time, until I could give him an answer that I wanted the timber; then he would furnish me with those papers:

(Testimony of William J. Kendall.)

he agreed to do that, but I considered the price, and looked it over, and from what knowledge I had of the country I thought the price was entirely too high at that time.

Q. He wanted $1.50 a thousand? A. Yes, sir.

Q. And then during the ten days or at the expiration of it you told him you didn't want anything to do with it? A. Yes, sir.

Q. Now, then, all the time that you lived in Missoula was up near Hamilton, was it not?

A. I lived in Missoula and Hamilton both of these places.

Q. When did you live in Missoula?

A. Well, Missoula has been my place of busines for three years, and my headquarters.

Q. Last three years? A. Yes, sir.

Q. Did you know Mr. Griswold for any part of the time previous to his moving down to Missoula within the last year or two? A. Yes, I have met him.

Q. Where? A. In Ravalli County.

Q. That is the county in which Hamilton is?

A. Yes, sir.

Q. How many times did you see him up there in that time?

A. I saw him quite a number of times around there, around in Ravalli County.

Q. When? A. I think it was in '95 or '96.

Q. What was he doing there?

A. Well, he was around there at different times on

(Testimony of William J. Kendall.)

different business; I did not know at all times what he was doing.

Q. Did you have any dealings with him?

A. I had some.

Q What—well, if you have anything back let us bring it out. Now is the opportunity to bring it all out.

A. Well, I don't feel like bringing out anything that is not necessary to bring out. I will answer all questions as far as they are of interest to you.

Q. Well, I want to know everything that you know against Mr. Griswold: either yourself or what you know from anybody if you know it; I want you to speak, and if you don't, I want you to tell me so.

A. Well, put your question and I will answer it.

Q. Now what do you know against him?

A. Well I had some business with Mr. Griswold and only in one way.

Q. What was the one way?

A. In paying him some money over once.

Q. I ask you to tell us all about it, all about what the business was, and if there was anything wrong about it, let us know about it.

A. Well, I had orders from Mr. D. V. Bean, Manager of the timber department of the Anaconda Company, to pay to Mr. Griswold $1,000 at one time, and I done so.

Q. Yes of course, and it was your contract, wasn't it?

A. No, sir.

Q. Whose contract was it?

(Testimony of William J. Kendall.)

A. That I don't know.

Q. Didn't you hear Mr. Bean tell about it yesterday afternoon?

A. Well, that was all right; I had no knowledge of the contract.

Q. You were here in the courtroom?

A. Yes, sir.

Q. And you heard Mr. Bean's testimony as to the circumstances under which that thousand dollars was paid? A. Yes, that was all right.

Q. Was that true?

A. Well, that was Mr. Bean's part of it. I am here on the stand to tell what I know about it.

Q. I know, and I ask you if you know of anything that Mr. Bean tsetified to in regard to the payment of the thousand dollars to Mr. Griswold that was untrue, to tell me?

A. Well, I don't know anything about Mr. Bean's testimony. I was here, but I am not a shorthand man, to take it down. I am here to tell my part of it.

Q. Outside of the fact that Mr. Griswold was paid $1,000 by your crowd there on the claim that he made that you were stealing from the Government land, what else do you know against Mr. Griswold?

A. I had nothing to do with the permit land that belonged to the Anaconda Company; I was a contractor, putting in logs for the Anaconda Company. That was my business, and I had orders from the manager of that department to pay Mr. Griswold $1,000.

(Testimony of William J. Kendall.)

Q. And you did pay him? A. Yes, sir.

Q. And you knew the purpose for which you paid him, didn't you?

A. Well, I had an idea what it was for.

Q. And that idea was substantially the same as Mr. Bean testified yesterday afternoon?

A. Well, there is no doubt that may be the facts.

Q. Now then, outside of this one transaction can you give me any other one?

A. No, I don't know of any other.

Q. Now, then, do you know of anybody that has told you of anything that Mr. Griswold ever did, anything that was wrong, prior to his making a complaint against this whole crowd of depredators upon the public domain, if you do know such a person, and name him?

A. I don't know as I could name any particular person, but I have heard it in a general way talked over, that he had been doing that kind of a business all of his life.

Q. I have no doubt he is not popular with you all?

Mr. WALSH.—I move to strike out the remark of counsel.

Mr. MAYNARD.—Well let him leave that in there.

Redirect Examination.

(By Mr. BICKFORD.)

Q. I want to ask you what kind of business you mean when you say that kind of business?

A. Well, blackmailing.

(Testimony of William J. Kendall.)

Q. You knew then that the thousand dollars that you paid Griswold at that time was blackmail, did you?

A. Yes, sir.

Recross-examination.

(By Mr. MAYNARD.)

Q. How did you know it was blackmail?

A. Because we were not on Government land; he was there without any authority from the Government to look over our ground; he was simply there as a blackmailer.

Q. Simply because he is a private citizen and had gotten onto information which the Government officials had not gotten onto, and which they might have gotten onto if you did not hush him up by paying him $1,000.—

Mr. WALSH.—And which he was willing to suppress on the payment of $1,000.

Q. Yes, which he was willing to suppress for $1000.

A. Yes.

Q. That is why you say he is a blackmailer?

A. Yes, that is why. He was a good citizen, too.

Recess until 2 o'clock.

WILLIAM J. KENDALL.

Subscribed and sworn to before me this 17th day of April, 1902.

HENRY N. BLAKE,
Examiner.

By the EXAMINER.—The witness, Mr. Kendall, is

(Testimony of William J. Kendall.)

here now, if you desire to recall him for further cross-examination.

By Mr. MAYNARD.—Yes, I do wish to cross-examine him further.

Thereupon the witness, WILLIAM J. KENDALL was called for further cross-examination and testified as follows:

(By Mr. MAYNARD.)

Q. Mr. Kendall, in looking over my notes I find that you testified that during the year of 1899 you bought claims under the Stone and Timber Act?

A. Yes, sir.

Q. I intended to ask you a few questions in regard to that matter, and I overlooked it when you were on the stand this morning, and you were not present at the beginning of this afternoon's session. Now, will you please tell me how many you bought?

A. Well, I am not prepared at the present time to state how many or any one particular claim.

Q. Why not?

A. Well, because I haven't got the parties here or the names or the prices paid, or anything of that kind; I haven't got a correct statement of it in any way here.

Q. Are they in your books?

A. Yes, sir; I can furnish them.

Q. Where are your books?

A. Well, in Missoula.

Q. Have you no recollection outside of and independ-

(Testimony of William J. Kendall.)

ent of your books, as to about the number of claims you bought?

A. No, I bought a great many, and I couldn't tell you the number of claims, or the amounts I paid for them; in fact, there would be no use in me going into it because I couldn't give you the details, or anything that would be satisfactory at the present time. I could furnish it later on if you require it.

Q. When did you commence to buy them?

A. Commenced in—well, in fact, I have been buying them for the past ten years.

Q. Under this special act known as the Stone and Timber Act? A. Yes, sir.

Q. What did you say?

A. Yes, well, under that and the pre-emption and homestead acts, and any way that they came into the market. Ever since the Timber and Stone Act was enacted and became a law, I have been buying it in several ways.

Q. I am confining it now solely to the purchases made by you under the Stone and Timber Act, Mr. Kendall.

A. Well, I have been buying them for a number of years under the Stone and Timber Act, but I couldn't state the number of years.

Q. Well, where were those timber lands situate?

A. In Missoula and Ravalli counties.

Q. Do you say that you have bought a hundred?

A. No, I don't believe I have bought that many.

Q. Not in your lifetime?

A. Not under the Stone and Timber Act.

(Testimony of William J. Kendall.)

Q. I mean under the Stone and Timber Act?

A. No, I don't believe I have bought that many.

Q. Well, have you bought fifty?

A. I probably have bought fifty.

Q. And assuming that you bought about fifty in your lifetime, how many would you say you bought during the season of 1899?

A. Well, I bought probably about half of that many, about twenty-five claims, I should think.

Q. About twenty-five claims during the season of 1899?

A. Yes, sir, I should say that many under the Stone and Timber Act.

Q. And those lands were in the counties that you have named?

A. Yes, sir, in the counties of Missoula and Ravalli.

Q. Now, I want you to tell me the method that you adopted in the purchase of these claims.

A. I simply bought them—

By Mr. BICKFORD.—We object to this, upon the ground that it is not proper cross-examination at all, and as not touching any matter that the witness has testified to on his direct examination.

By Mr. MAYNARD.—The answer is in a direct answer to the question, put by my brethren on the other side. The witness stated that he had bought claims under the Stone and Timber Act; now, on the cross-examination of the witness, I desire to inquire how he bought them and the method he adopted.

(Testimony of William J. Kendall.)

Q. You may proceed, Mr. Kendall.

A. Well, I made it a point to look over the title and get a clear title to the timber, and when I found that there was a claim with a clear title, I bought them and paid for them.

Q. That is, when a man wanted to sell you the claim, you required him to furnish you with an abstract?

A. Well, not in all cases I didn't demand an abstract. I generally looked over the records to see if the titles were clear and all those things. I generally—

Q. Did you do those things yourself, or through your attorney? A. Well, my attorney did do it for me.

Q. Who was your attorney?

A. Robert O'Hara, he did a great deal of my work, and I had other attorneys in Missoula.

Q. What is that?

A. I had attorneys in Missoula. They did work for me, but O'Hara and Hamilton have done most of my work.

Q. Where do they live?

A. They live over at Hamilton, the attorneys that have done most of my work for me.

Q. What is that?

A. Whatever attorneys I had working for me to make out deeds and papers like that.

Q. Well, did you act upon their advice?

A. Well, I did as far as getting up papers of a legal nature, but as far as estimating and things of that kind, I did all of it myself.

Q. I was referring solely to the legal part of the matter.

(Testimony of William J. Kendall.)

A. Well, of course, I depended upon my attorneys for that advice. I bought a good deal of timber and got duplicates of deeds, and I never waited for the final deeds, for the patents.

Q. What is that?

A. I say I never waited for the patents, the duplicate receipts were enough for me. If they showed me the duplicate, I would buy it, if it was considered all right. It is customary all over the country to buy timber in that way.

Q. Did you ever buy the timber or enter into a contract to buy previous to the final proof?

By Mr. BICKFORD.—We object to that, for the reason it is not proper cross-examination.

A. No, sir.

Q. What is that? A. No, sir, I never did.

Q. You never did? A. No, sir.

Q. Did you ever assist any of these entrymen or entrywomen that you may have bought from, by advancing them money with which to buy the land?

By Mr. BICKFORD.—We object to that, for the reason that it is not proper cross-examination, and further, it is irrelevant and immaterial, and does not prove or tend to prove any issue in this case.

A. No, I don't know as I ever did; I may have encouraged them if I thought there would be a chance for the sale of it, and would give them my advice as to whether

(Testimony of William J. Kendall.)

or not it would come into the market, or anything of that kind, if they asked me about it.

Q. You never advanced them any money?

A. No, sir.

Q. In no case did you advance any money?

A. No, sir, in no case.

Q. Do you know of its being done?

A. No, I don't know as I know of any particular case where it is done.

Q. Did you ever know of a man engaged in the business that you were engaged, namely, in buying claims, and advancing them the full price of the land, and all the expenses in proving up, without any security whatever, or a note or mortgage?

By Mr. BICKFORD.—We object to that, upon the ground it is irrelevant and immaterial, and does not prove or tend to prove any issue raised in this case, and upon the further ground that it is not proper cross-examination.

A. No, I don't know as I ever did.

Q. You don't know as you ever did?

By Mr. BICKFORD.—We object to that, for the reason it is irrelevant and immaterial, and is not proper cross-examination.

Q. You don't know as you ever did; is that your answer? A. Yes, sir, that is my answer.

Q. During this season of 1899, you heard nothing of that kind being done by Mr. Cobban?

A. No, I never heard anything of that kind.

(Testimony of William J. Kendall.)

Q. What did you say?

A. I never did, I never heard anything of the kind.

Q. No one in the community where you lived and where you were doing business?

A. No, I don't remember that I heard anything about it.

Q. Nobody told you anything about it?

A. No, sir, I don't recollect of hearing anything about it, or hearing any history of Mr. Cobban doing anything of the kind.

Q. Where did you first hear of it?

A. I have heard more of it here than any place I have been.

Q. Didn't you hear of it before you came to town?

A. Well, I certainly did; when the suit was started it was circulated around. I heard of it, and I suppose everybody heard of it.

Q. How long had you heard of it before Mr. Griswold started his suit? A. Never heard of it.

Q. And when Mr. Cobban was offering you to sell lands to you, you didn't know anything about how he was acquiring them?

A. No, sir, I supposed that the titles were all right, and I had no reason to think they were not. The titles didn't interfere with any deals between me and him, or wouldn't have. I considered that his titles were as good as any that had ever been given.

Q. You considered it without knowing anything about how he got it?

(Testimony of William J. Kendall.)

A. Well, I certainly would have taken these things up without putting much money in it.

Q. What would you have taken up?

A. Well, I would have seen that the titles were all right, that is as far as I could have investigated it. I had no proof of anything else, and probably wouldn't have looked for anything except to see that there were no mortgages on the land; that would have been about the only thing that I would have been looking for.

Q. You would have concerned yourself in no way about the circumstances under which he acquired the land?

A. No, sir, I don't believe I would.

Q. You don't believe you would?

A. I would not have been acquainted with the fact of there being any—

Q. Fraud? A. Fraud, yes, sir.

Q. If you didn't inquire into it?

A. No, because I wouldn't have been looking for it.

Q. As I understand you, then, the safe way is not to look out very much in the purchase of these lands that are entered under the Stone and Timber Act, for fear you may discover fraud. Is that what you mean, Mr. Kendall?

By Mr. BICKFORD.—We object to that, for the reason it is not proper cross-examination, and further, for the reason that the statement of counsel as made to the witness is not a statement made by the witness himself, in his testimony, and is a misconstruction of the statement made by the witness.

A. No, I don't mean that. I mean that it is a long

(Testimony of William J. Kendall.)

roundabout road to investigate titles, or how timber was secured, or in what way, unless I went about it the way that Mr. Griswold did, by blackmailing someone, or something of that kind, I wouldn't have known how to go at it.

Q. You mean by that that if you are anxious to acquire land for any purpose, the safest way would be for you to make little or no inquiry as to the proceedings in the entry prior to the issuance of final receipt?

By Mr. BICKFORD.—We object to that, for the reason it is not proper cross-examination, and further, for the reason that the statement of counsel as made to the witness is not a statement made by the witness himself, in his testimony, and is a misconstruction of the statement made by the witness.

A. Well, I never took that into consideration, how they got title to the land and got a duplicate for it; the fact that they had a duplicate receipt was good enough for me. I had no reason to go any further into the investigation of the title as to how they secured it.

Q. Well, was one of the principal reasons that in doing that if they failed to investigate they would not disclose fraud?

A. No, there was nothing of that kind in view at all, or any thought of anything about it. The duplicate receipt was good enough for me, and I considered it all right. Later on, if there was any contest, or a cancellation of an entry, of course that I had to take chances on.

Q. That is, if it was canceled afterwards by the Com-

(Testimony of William J. Kendall.)

missioner of the General Land Office or the Secretary of the Interior, you would be out your money?

A. Yes, sir, I had a number of cases of that kind.

Q. How many cases of that kind in your experience, did you lose your investment, Mr. Kendall?

By Mr. BICKFORD.—We object to that, for the reason it is immaterial and irrelevant, and does not prove or tend to prove any of the issues raised by the pleadings in this case, and upon the further ground that it is not proper cross-examination.

A. I had some four cases to investigate; they were canceled for a time, to make the investigations, and afterwards they were turned back to the parties; in fact, I never lost anything.

Q. What is that?

A. I never lost anything, I said.

Q. I thought you said you had lost several cases?

A. Well, I said I had lost them in this way, that they were canceled for a time until after investigation.

By Mr. WALSH.—Suspended, is that what you mean?

By the WITNESS.—Suspended, yes, suspended for investigation, and afterwards the parties won out.

Q. After you had bought the claim?

A. Yes, sir.

Q. And contests were made on the ground of fraud in the entrymen?

A. Well, it was made in that way. If such a man as Mr. Griswold wanted to blackmail them and make them

(Testimony of William J. Kendall.)

believe they had not complied with the law, and make them think they had not made out a good title, they could have lots of trouble of this kind up in that country.

Q. You had a lot of that kind of trouble, did you?

A. Yes, sir, spite against entries, or something of that kind, and spite against the entrymen, and after we investigated them we found there was no truth in it, and the land would come back to them, and consequently I never lost anything.

Q. But, if the contest had resulted in the suspension of the claim, then you knew you would be out your money, didn't you?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and further it is irrelevant and immaterial, and calls for a conclusion of law from the witness, rather than a fact.

Q. Mr. Kendall, is that so?

A. Yes, sir, that would be it, of course, I would be the loser.

Q. And you said that you were willing when you made the investment, to take those chances?

A. Well, I had to take those chances.

Q. Well, when you made your investment you had to take those chances?

By Mr. BICKFORD.—We object to that upon the ground that the witness has already answered the question twice, and further it is not proper cross-examination.

(Testimony of William J. Kendall.)

A. Yes, sir.

Q. But in no one of the contests that were made, were they successful, as I understand you?

A. In none of them.

Q. But you were called upon to contest it four times? A. Four different cases, yes, sir.

Q. In the local land office? A. Yes, sir.

Q. Were any of them appealed?

A. Well, yes, there were two cases, I believe, that were appealed.

Q. Appealed to Washington? A. Yes, sir.

Q. And the decision of the local land office affirmed?

A. Yes, sir.

Q. Was there any appeal from the Commissioner of the General Land Office to the Secretary of the Interior? A. I believe one, yes, one case.

Q. You say that it was appealed to the Secretary of the Interior from the decision of the Commissioner of the General Land Office?

A. Yes, sir, I believe in one case.

Q. Then the decision of the Commissioner of the General Land Office must have been against you, Mr. Kendall? A. Well, it was.

Redirect Examination.

(By Mr. BICKFORD.)

Q. Now, I will ask you to state, Mr. Kendall, whether any of those contests that you have mentioned were instituted by the Government of the United States

(Testimony of William J. Kendall.)

itself, or was the contest instituted between individuals concerning the land?

A. It was by individuals; it was made by parties that had grievances.

Q. In any instance was there a contest initiated by the United States, or was the contest instituted such as you have spoken of?

A. No, sir, not by the United States.

Q. Do you recall as among the claims that were purchased by you, one made by W. M. Draffen, during the summer of 1899, or during the year 1899?

A. Yes, sir, I do; I believe I do have some knowledge of it.

Q. Have you any knowledge as to where that timber and stone claim was, Mr. Kendall?

A. Well, now I couldn't go into the details and give the section and township.

Q. No, but what county was it in?

A. It was in Ravalli County.

Q. Was it near Hamilton, or what point?

A. Well, it was near the Ross' hole district, in the upper end of the Bitterroot valley.

Q. You remember of their being such an entry as that, do you?

A. Yes, sir, I remember there was such an entry, but I couldn't state the time or give a description of the land.

WILLIAM J. KENDALL.

(Testimony of Robert G. Dixon.)

Subscribed and sworn to before me this 17th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

(At this point it was proposed to recall Charles A. Jakways to the stand for cross-examination, but Mr. Maynard stated that he expected to take at least half a day in the cross-examination of Mr. Jakways, and that he might be able to save an hour by having a chance or an opportunity to review the testimony, and to look over it. The calling of Mr. Jakways was deferred until tomorrow.)

ROBERT G. DIXON, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Dixon, where do you live?

A. At Ovando, Montana.

Q. What is your age?

A. I am forty years old.

Q. What occupation or business do you follow?

A. Saloon business there for seven years, the first of May.

Q. Any other occupation, Mr. Dixon?

A. No, nothing else since I went into the saloon bus-

(Testimony of Robert G. Dixon.)

iness. Before I went into the saloon business I was mining more or less.

Q. Do you know Chauncey L. Griswold?

A. Yes, sir.

Q. How long have you known him?

A. Since the summer of 1893, I think, when I first got acquainted with him.

Q. Where did you meet him, Mr. Dixon, in 1893?

A. In Ovando.

Q. Where has he lived since you knew him?

A. Why, he has lived in that neighborhood most of the time. Most of the time he has lived up at Clearwater. He had a stopping-place and a saloon there.

Q. How far was that from your residence?

A. Oh, about twenty-two or twenty-three miles; somewhere in that neighborhood.

Q. Do you know what his general reputation is in the neighborhood in which he lives, for truth and honesty and integrity? A. Yes, sir, I do.

Q. What is it, good or bad? A. It is no good.

Q. Do you know one, L. A. Wells, who lives in that vicinity? A. Yes, sir, I do.

Q. How long have you known him?

A. About fifteen years, between fifteen and sixteen years. I couldn't say exactly, but somewhere along about fifteen years.

Q. And during that time, where have you known him? A. At Ovando.

Q. How far from there does he live?

(Testimony of Robert G. Dixon.)

A. I think it is six, eight or nine miles that he lives from Ovando. He generally makes his headquarters in Ovando; that is, he generally gets his mail there.

Q. Do you know what his general reputation for truth and veracity is in the county in which he lives?

A. Yes, sir.

Q. What is his reputation in that country?

A. Well, the truth don't count for much.

Q. Is it good or bad? A. It is bad.

Cross-examination.

(By Mr. MAYNARD.)

Q. How old are you, Mr. Dixon?

A. I am forty years old.

Q. Did you live long in Ovando before entering upon your saloon business?

A. Yes, sir, I have lived there in Ovando, off and on for nearly seventeen years; most of the time in Ovando, about fifteen years of it in Ovando, that is, most of the time.

Q. You know Jakways & Faust, don't you?

A. Yes, sir.

Q. How many times did you become a witness for these entrymen and entrywomen?

A. How many times?

Q. Yes, sir.

A. For Jakways & Faust, do you mean?

Q. No, the people that made entries under the Stone and Timber Act.

(Testimony of Robert G. Dixon.)

A. Why, only once, I made one trip to Helena for Mr. Doney, that is all that I made.

Q. Where did you get your money from to come as a witness to Helena?

A. Where did I get my money to come as a witness to Helena?

Q. Yes, sir?

A. Why, I made it selling whisky.

Q. You used your own money then, did you?

A. Yes, sir.

Q. Did you afterwards get it refunded to you, Mr. Dixon? A. I did, yes, sir.

Q. Who from? A. From Mr. Doney.

Q. How much did he pay you?

A. I think it was fifty dollars, I am not certain; I think that is what it was.

Q. What is that?

A. I am not certain, but I think it was twenty dollars.

Q. Did that cover your expenses?

A. No, it did not, but I had some business over there in Helena at the time, and I wanted to make a trip over there, so I didn't charge him what my full expenses were. I suppose if I had, it would have been a little stronger than he could have stood.

Q. A little stronger than he could have stood?

A. Yes, sir.

Q. Because you know that he hasn't got any money to burn?

(Testimony of Robert G. Dixon.)

By Mr. BICKFORD.—We object to that as not being proper cross-examination.

A. Yes.

Q. Because you knew that he hadn't got any money or property, is that the reason?

A. No, not exactly, he has got property, and had property then. He had cattle.

Q. Why did you say it was stronger than he could have stood, to pay your actual expenses?

A. Well, if a man has got a big family, say a family of ten or twelve children, and putting up for a man that is in the saloon business, on a trip of that kind—

Q. What was that?

A. I say a man that has got a large family to support, it would go pretty hard on him to pay the expenses of a saloon-keeper in making a trip of that kind. As a rule, I think they are pretty steep.

Q. Do you mean the expenses of a saloon-keeper when visiting your fellow saloon-keepers over in Helena?

A. Yes, if that is the way you want to put it; yes.

Q. But did Mr. Doney himself pay you this money?

A. Why, no, he didn't pay me it himself, but it came out of his pocket. At the time I went over to Helena I had a mortgage on some of Mr. Doney's cattle, and the money was paid to me for this mortgage, through Jakways & Faust afterwards, and in the settlement, this fifty dollars for expenses over there, was included.

(Testimony of Robert G. Dixon.)

Q. He paid it to you, did he?

A. He paid it to me at the time he settled for this mortgage; it was settled for after I came back from Helena.

Q. But you got your money from Mr. Jakways or Mr. Faust, or the firm of Jakways & Faust, did you not?

A. I got their check, but as I say, it was included in what was owing to me on this mortgage; the money that Mr. Doney owed me. It was two or three hundred dollars, something like that. I didn't consider it Jakway & Faust's money at all, I considered it Mr. Doney's money at the time, and do now.

Q. But I asked you, and say, as a matter of fact, that the check you received to pay your expenses over to Helena, came from Jakways & Faust at that time?

A. Well, it was included in that money that was paid for this mortgage. When I settled up with Jakway & Faust, the whole thing was paid in a check. I believe I settled my own account at the time; I am not sure, though, but I think I got my bills from them at that time, and settled them up; that is my recollection about it.

Q. How much did you say you had a chattel mortgage on Doney's cattle for at the time?

A. I am not positive, but I think it was two hundred and seventy-five dollars. The interest and altogether amounted to something like that.

Q. Two hundred and seventy-five dollars?

(Testimony of Robert G. Dixon.)

A. Well, that is my recollection about it. I think that is what it came to with the interest.

Q. How long had the principal been running?

A. I couldn't say, but I think it had been running for pretty near two years and a half, somewheres in that neighborhood; he was unable to pay it before, and I didn't press it or push him at all to pay it.

Q. Well, if he was owing you that amount of money that he couldn't pay you, and you had a chattel mortgage on his cattle, how did you understand at the time when you were a witness for him, that he was going to pay you nearly five hundred dollars, which the costs would be, to buy a hundred and sixty acres of land?

A. Well, that was none of my business. I didn't inquire into it all; in fact, the time we went over to Helena, I didn't know whether he was going to pay the mortgage or not that year; I wasn't pushing him for it at all, but he came back from Helena, and a week or two after he came back he came in and told me he could straighten out this loan with me and would settle with me. Afterwards he came in and told me my money was there at the store of Jakway & Faust, that he had left it there for me.

Q. How, in the financial condition in which he was could his wife, Martha A. Doney, buy a hundred and sixty acres of land?

A. I couldn't say anything about that; I never inquired into their financial standing?

Q. What?

(Testimony of Robert G. Dixon.)

A. I couldn't say, I never inquired into their financial standing. It was a business proposition, and when he came to me and wanted the money, I let him have it and took a chattel mortgage.

Q. Well, you inquired into it to the extent of getting the chattel mortgage, did you not?

A. I didn't say I inquired into it.

Q. Do you remember of any stuff that he had around his place there to mortgage; did you ever see what he had?

A. I didn't go up to his place at all. He told me he would give me a mortgage on a certain number of cattle. I couldn't say how many head there was; I couldn't say whether there was twenty head or a hundred and fifty head.

Q. You couldn't say how many head of cattle he had at all, could you; you didn't know?

A. No, I didn't know.

Q. And if you knew, then, at the time that this chattel mortgage was executed that he couldn't pay the interest, you knew the number of cattle then that he had, did you not?

A. He gave me a chattel mortgage on the cattle, and when the chattel mortgage was due he came and paid me the amount. I don't know whether he had any more cattle or not; I know he gave me the mortgage on the cattle.

Q. Well, I ask you now whether he had any more cattle?

(Testimony of Robert G. Dixon.)

By Mr. WALSH.—We object to that upon the ground it is irrelevant and immaterial and not proper cross-examination.

A. I don't think inquired of him to know whether he had any more cattle.

Q. Well, did you inquire at any time whether he had any cattle?

By Mr. WALSH.—We object to that upon the ground it is irrelevant and immaterial and not proper cross-examination.

A. No, I didn't; I didn't ask him if he had any more.

Q. Well, after you returned from Helena, you went there to Jakways & Faust's and got the entire amount of your claim, did you?

A. I think it was a month or two months after that; I couldn't say how much it was exactly, afterwards.

Q. Well, you don't know how long a time it was. Will you say the length of time, as near as you can?

A. Somewheres in that neighborhood. I couldn't say whether it was a month or two months.

Q. How much money did you get from Jakways & Faust?

A. Somewhere in the neighbrhood of two hundred and fifty dollars or two hundred and seventy-five dollars; I wouldn't be positive as to that, because it was three years ago, and it has skipped my memory.

Q. Who paid that money?

A. I think it was Mr. Faust; I wouldn't be positive;

(Testimony of Robert G. Dixon.)

I think it was him. He didn't pay me any money, but he gave me a check.

Q. Do you know where this land was?

A. Yes, sir. That Mr. Doney proved up on do you mean?

A. Yes, sir.

A. I certainly did, because I went as a witness to the land office, and I wouldn't have gone to Helena as a witness if I had not been familiar with the land.

Q. Did you go there with him? A. Yes, sir.

Q. How many times? A. Once.

Q. How long before going to the land office, Mr. Dixon?

A. Yes, sir. Oh, how long before going to the land office?

Q. Yes, sir.

A. How many times did I go before the land office?

Q. Yes, sir.

A. Well, I went to the land office once, the only time I was in the land office that I remember of.

Q. Well, that is what I say. How long had it been previous to your going to the land office, at the time that you have mentioned, when he proved up, that you went out to this claim with Mr. Doney?

A. Oh, I was out on that land with Mr. Doney in July, I think it was—no, it was April, it was just when the snow was going off. It was in April, I think, although I don't remember just when it was. I don't remember just when it was that we went on that land. I

(Testimony of Robert G. Dixon.)

couldn't say what the number of the section was that Mr. Doney had his claim on; I mean the township—but the section that Mr. Doney's claim was on was number 2, I think that is it, No. 2.

Q. Were you a witness for Mrs. Doney, too?

A. Yes, sir.

Q. And you don't know what section her land was on?

A. No, I don't; I think it was number 10, although I am not positive.

Q. Did you go to see this land of hers, too?

A. Yes, sir, the sections join together.

Q. You went and made a trip particularly to look at this land, did you?

A. Why, I went out with a man that was talking about going to look at this land. He was working for the Blackfoot Milling Company; his name was McNamara; he was thinking of taking a logging contract there; that is how I got acquainted with these two claims.

Q. Very well. I ask you again, sir, if previous to your coming to the land office, you made a trip to these locations, to see about the amount of timber, in order to qualify yourself as a witness in the Doney cases?

A. No, sir, I didn't do any such thing.

Q. What do you mean, then, by saying you went out there in April? A. Went out in April?

Q. If you went there in April—you went there in April to see these claims with Mr. Doney?

(Testimony of Robert G. Dixon.)

A. I went to look at these claims. He told me he wanted a claim; I was out there on a hunting trip in the fall, and I saw those claims then. I told him, I think, there was a claim on section 2, and I went out there and showed it to him.

Q. He didn't take it up at that time, did he? He didn't think it was worth taking up at the time?

A. I don't know about that; I don't think he took it up at the time, though.

Q. You say that Mr. Griswold's reputation is not good?

A. No, it isn't good; you ought to know that by this time.

Q. Well, I know it isn't good among a lot—among a large class of lawbreakers; I know that. Your home has been all the time at Ovando, has it?

A. Well, I didn't tell you that.

Q. Well, for the past seven or eight years?

A. Well, for the past seven or eight years continuously.

Q. And you have been selling whisky during that time? A. Yes, sir.

Q. Has Mr. Griswold lived anywhere near you, except as you claim it is near to live at Clearwater?

A. No, he has been there off and on, but he has never made his home there.

Q. Do you know anything about anything that Mr. Griswold has done that is in violation of any law, during his visits to Ovando?

(Testimony of Robert G. Dixon.)

A. No, I cannot say that I do, only the laws of truth and veracity between man and man.

Q. What is that?

A. Only the laws of society, between man and man, that is all. I don't know anything of his being a criminal, unless he is a perjurer, and he has got that reputation now, I guess.

Q. Did you ever hear him criticised before he commenced suit against Mr. Cobban?

A. Yes, sir, thousands of times by nearly everybody.

Q. In your saloon?

A. Outside of my saloon, before ever I was in the saloon business at all.

Q. Can you name one man that has criticised him?

A. Yes, sir.

Q. Well, name one.

A. Well, I can name Jakways & Faust, for one.

Q. Well, name another.

A. Well, George L. Hammond, for another one, a brother of A. B. Hammond.

Q. Undoubtedly.

A. And nearly every business man that he could get into.

Q. Can you name one that has been—can you name one that has not been prosecuted or threatened with prosecution for stealing timber from the government land?

A. I couldn't say that Mr. Hammond has been sued, or prosecuted by the government.

(Testimony of Robert G. Dixon.)

Q. Don't you know that prosecutions were commenced against the Hammonds some years ago?

A. I don't know, might have been.

Q. You knew that, didn't you?

A. I don't know, might have been.

Q. Might have been. You knew it, didn't you?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and has no possible bearing upon any of the issues raised by the pleadings in this case, and upon the further ground that it is not proper cross-examination.

A. No, I didn't know it.

Q. Well, you had heard about it, hadn't you?

By Mr. WALSH.—We object to that, for the reason that it is irrelevant and immaterial and hearsay.

A. Well, I heard of the Old Montana Improvement Company that Sparks was after at one time.

Q. And the Hammonds were the principal stockholders of that company, weren't they?

By Mr. WALSH.—We object to that, for the reason it is irrelevant and immaterial, and not proper cross-examination.

A. I don't know that they were principal stockholders of the company; they might have for all I know.

Q. Now, I ask you if you know of any one man that has said anything about Mr. Griswold, to criticise him, except some man that has been prosecuted for stealing timber from the government, or charged with it, or

(Testimony of Robert G. Dixon.)

threatened to be prosecuted for stealing timber from the government land.

A. Yes, I could name lots of men.

Q. Well, then, name one.

A. I could name you George LaCrosse.

Q. What did you say that name was?

A. Joshua Frost.

Q. Who is Joshua Frost?

A. He is a Canadian Frenchman.

Q. Where is he now?

A. I couldn't say where he is now.

Q. You don't know where he is now?

A. No, I couldn't say.

Q. What was he doing?

A. He is a logger.

Q. Where does he work?

A. He works on the river down there

Q. Well, then, name another one, if you know one?

A. Well, there is George Lavelle?

Q. Where is he now?

A. I couldn't say where he is.

Q. Men that have drifted into your saloon, aren't they?

A. Sometimes they were there and sometimes they were not.

Q. Well, can you name any other man besides these floaters that you have named here now?

A. I don't know what you mean by a floater.

Q. Don't you know what a floater is?

(Testimony of Robert G. Dixon.)

A. No, what is a floater?

Q. What is a floater? Men that have drifted into your saloon.

A. If you will explain to me and give me a definition of the word "floater." Do you mean a man that works for a living?

Q. I mean a man that has gone into your saloon there, casually.

A. If you mean by that, what we call laboring men, we don't call them floaters.

Q. Well, we will call them laboring men. Do you know anybody except the men that have come into your saloon and gone, that have ever criticised Mr. Griswold, and if so, name some man who has an abiding place.

A. Well, James Riley; he is a rancher up there west of town.

Q. Where is his ranch?

A. It is northwest of Ovando.

Q. How far from Ovando?

A. Oh, it is three or four miles from Ovando.

Q. That is one man you are able to locate. What have you ever heard him say?

A. He said he was no good, that he was crooked.

Q. Did he specify in what way he was crooked, except that general charge? A. Why, yes.

Q. Well, name what the facts are, then.

A. He said that he had had dealings with him when he was logging, and that he robbed him in every way he could.

(Testimony of Robert G. Dixon.)

Q. Did he say in what way?

A. By his books.

Q. Who was running the saloon there?

A. Griswold was.

Q. What was this other man doing?

A. He works on the river there, logging.

Q. What business did he have with Mr. Griswold?

A. I suppose he was doing business with him in the saloon business. I don't know what other business he might have had with him.

Q. You don't know what business he had with him?

A. No, I suppose he had business with him in the saloon, a saloon account or a hotel account, or something of that kind. He ran both a hotel and a saloon; that is, Griswold did. He was in the hotel and the saloon business.

Q. You mean that this man complained that Griswold had overcharged him on the whisky bill?

A. That is what I heard him say, that he had charged him for going by his saloon when he didn't go in at all.

Q. That is what you heard? That is the specific averment that this man made, that Mr. Griswold had charged him for whisky drinks when he didn't stop at his place? A. Yes, sir.

Q. Anything else?

A. Oh, there might have been; I couldn't say for certain.

Q. Well, go on and name another man?

(Testimony of Robert G. Dixon.)

A. Well, if I had the Blackfoot Milling Company's payroll here, I could probably go over them and pick out a good many.

Q. Well, here is Mr. Vogel right here. I don't think he is a drinking man; he appears to me as if he wasn't.

A. Well, maybe he isn't.

Q. Maybe he isn't, and it is refreshing that he is a man of honesty and integrity, and one of the few that have appeared here for the defense. That is all, unless you have found out some other man's name.

A. Well, I could name them if I had the Blackfoot Milling Company's pay-roll here.

Redirect Examination.

(By Mr. WALSH.)

Q. Now, about this indebtedness of Mr. Doney's to you?

Q. How did that indebtedness arise?

A. He borrowed money from me, and he gave me a chattel mortgage on his cattle.

Q. It wasn't the matter of an account that he had with you at your saloon, was it?

A. No, sir. That seldom ever amounts to anything: it don't amount to more than a dollar or so.

Q. Mr. Dixon, are there any people up in your section that have not been accused of stealing timber from the Government?

A. Yes, sir, lots of them. I don't name myself; I wasn't accused of stealing from the Government.

Q. The people named in the bill of complaint here

(Testimony of Robert G. Dixon.)

are not all the people, then, that live in your county, are they? A. No, sir, they are not.

Q. And so far as you know, they do not live in that neighborhood, do they? A. No, not all of them.

Q. Now, I wish you would tell the counsel, among these people that have not been accused of stealing timber from the Government, speak in terms of commendation of the honesty and integrity of Chauncey L. Griswold?

A. Well, I cannot say that I ever heard anybody say that Griswold was a man of any veracity. I cannot call to mind anybody that I ever heard say that he was a man of any force of veracity—truth and veracity.

Q. I wish you would also tell the counsel here whether there is a division of opinion among people in that locality up there, along the lines of there being or not being accused of stealing timber from the Government, those having been accused saying that he is dishonest, and those not being accused?

A. I don't know of one that ever thought that Griswold ought not to be in Conley & McTague's boarding-house at Deer Lodge.

Q. And is that confined to these people against whom these charges have been made, Mr. Dixon?

A. No, sir, it is the general opinion of the people in that community.

Q. That is the general opinion of the people in that community, you say?

(Testimony of Robert G. Dixon.)

A. Yes, sir, that is the general opinion of people up in that country.

Recross-examination.

(By Mr. MAYNARD.)

Q. In other words, those that are not arrested up there in that country, are afraid they will be.

A. I don't know about that.

By Mr. MAYNARD.—That is all.

ROBERT G. DIXON.

Subscribed and sworn to before me this 17th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Hearing adjourned until Thursday morning at ten o'clock.

HENRY N. BLAKE,
Examiner in Chancery.

Wednesday, April 16th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

ALBERT F. MUCHMORE, a witness heretofore sworn, being called on behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Muchmore, you testified in this case before on behalf of the Government, didn't you?

A. Yes, sir.

(Testimony of Albert F. Muchmore.)

Q. Where do you live, Mr. Muchmore?

A. At Ovando, Montana.

Q. How long have you lived there?

A. Twelve or fourteen years.

Q. What is your business or occupation there?

A I am a farmer.

Q. How far from Ovando do you live?

A. About three miles.

Q. Do you know one Chauncey L. Griswold?

A. Yes, sir.

Q. How long have you known him, Mr. Muchmore?

A. About six years, I think.

Q. Where did he live when you knew him?

A. He lived on the Clearwater.

Q. How far was that from your residence?

A. About twelve miles.

Q. Were you somewhat familiar with the immediate vicinity where he lived? A. Yes, sir.

Q. What occasion had you to go there at any time?

A. Well, on every occasion when traveling back and forth up and down the river.

Q. Well, is that distance considered an extraordinarily long distance, in that part of the country?

A. No, sir.

Q. People in that distance become reasonable well acquainted with each other, do they not?

A. Yes, they do.

Q. Do you know what the general reputation of

(Testimony of Albert F. Muchmore.)

Chauncey L. Griswold, in the vicinity in which he lives, for truth, honesty and integrity is? A. I do.

Q. What is it, good or bad, Mr. Muchmore?

A. Well, it is bad.

Q. Do you know one L. A. Wells? A. Yes, sir.

Q. Where does he live, Mr. Muchmore?

A. He lives on Cottonwood.

Q. How far is it from your residence?

A. It is about eight miles.

Q. How long have you known him?

A. Eight or ten years, I should judge.

Q. Do you know what his general reputation is in the neighborhood for truth and veracity?

A. Yes, sir, I think I do.

Q. What is it, good or bad?

A. Well, it isn't very good for truth.

Q. Has he got something of a reputation in that respect in that neighborhood, Mr. Muchmore?

A. I don't understand the question.

Q. Has he got something of a reputation in the matter of truthfulness, or a lack of truthfulness in that neighborhood? A. Yes, sir, he has.

Q. What is his reputation about that?

A. Well, it is for lack of truthfulness.

Cross-examination.

(By Mr. MAYNARD.)

Q. You have testified here before, have you not?

A. I have, yes, sir.

Q. And I notice that the question was asked you

(Testimony of Albert F. Muchmore.)

whether you were indicted by the Grand Jury for making a fraudulent entry, and that you in your answer say, "Yes, sir, I was." That is true, is it not?

A. Yes, sir.

Q. And you are under indictment now, aren't you?

A. I believe so, yes, sir.

Q. And you think that the Government witness, Mr. Griswold, who appeared before the Grand Jury that indicted you and gave testimony, has a reputation that is not good for truth and veracity?

A. Yes, sir, I know that he has.

Q. Well, I suppose that you don't feel friendly toward him by reason of the testimony that he gave, do you?

A. Well, no, I don't for that and for other reasons.

Q. And speaking in the way that you understand, you have got it in for him, and have had it in for him ever since he appeared before the Grand Jury, have you not? A. I don't think I have, sir.

Q. What is that?

A. I don't think that I have, no.

Q. Haven't your brothers, several of whom were indicted, and your mother—your mother was also indicted, wasn't she? A. No, sir.

Q. Your sister, wasn't she indicted?

A. No, sir.

Q. Who is Elizabeth A. Muchmore?

A. She is my aunt.

Q. Then you and your brother have made threats

(Testimony of Albert F. Muchmore.)

against Mr. Griswold since you were all indicted, haven't you? A. No, sir.

Q. That you would get even with him at the first opportunity? A. No, sir.

Q. How long was—how long did you say that you had known him?

A. About six years, I think, since I first became acquainted with him.

Q. And you live where, did you say?

A. I live at Ovando.

Q. At Ovando? A. Yes, sir.

Q. Right in the—right where the store of Jakways & Faust is?

A. No, sir, about four miles out from their store, three or four miles.

Q. Mr. Griswold never lived there, did he?

A. He stopped at Ovando one summer some years ago, I think it was about six years ago.

Q. About six years ago you think?

A. Somewhere about that time, five or six or seven years.

Q. How old are you, Mr. Muchmore?

A. Twenty-seven years old.

Q. Some six or seven or eight years ago, you cannot tell when, he stopped at Ovando one summer?

A. Part of one summer, yes, sir.

Q. Part of one summer? A. Yes, sir.

Q. What did he do there?

A. Well, he was looking for timber.

(Testimony of Albert F. Muchmore.)

Q. Who for?

A. I don't know; I understood that was his business; I didn't know and I don't know now.

Q. Is that the only time that he has been to Ovando to your knowledge? A. Yes, sir.

Q. Did you hear anything against him then?

A. No, I don't know that I did.

Q. And his home for the last two or three years has been at Missoula, has it not? A. I believe so.

Q. Have you heard anything about his doing anything that was wrong in the city of Missoula, Ovando being how many miles away?

A. Fifty or sixty miles.

Q. How many miles is your home from Missoula?

A. About sixty miles.

Q. Well, now, during the three years that he has been living at Missoula, where is now living, and you were living sixty miles away from him, have you heard anything of him there, or of anything about his reputation there?

A. Well, I heard that it wasn't good.

Q. But you haven't lived in Missoula during this three years, have you? A. No, sir.

Q. Well, now cutting the time out that he has lived in Missoula, what space of time do you know anything about, Mr. Griswold. Where did you have an opportunity to get acquainted with him?

A. Well, I became acquainted with him while I was working for him one winter in a timber camp.

(Testimony of Albert F. Muchmore.)

Q. When was that?

A. I don't know what year that was. It was four —about four years ago. I think four or five years, somewhere along there, about 1897 or 1898.

Q. Whereabouts was this?

A. This was on the Clearwater.

Q. What was he doing then?

A. He was putting in logs for the Blackfoot Milling Company.

Q. And what were you doing?

A. I was working for him.

Q. You were working for him, did you say?

A. Yes, sir.

Q. How much did you get a day?

A. I don't remember now; a dollar and a half a day and board, I think.

Q. What is that?

A. I got a dollar and a half a day and board, or something like that.

Q. A dollar and a half a day and board?

A. Yes, sir.

Q. How long did you work for him?

A. About three months.

Q. Did you ever work for him before that time?

A. No, sir.

Q. Did you ever work for him since?

A. No, sir.

Q. And you don't know when this was?

A. No, sir, I don't remember the day or the year.

(Testimony of Albert F. Muchmore.)

Q. Did you have any trouble with him?

A. No, sir, I had no trouble with him. He had—

Q. Did he have any trouble with you?

A. No, sir, he had a foreman there that had charge of the work, and I had very little to do with him; had no dealings with him.

Q. Did you have trouble with Mr. Griswold's foreman? A. No, sir.

Q. Well, did you see or know anything of his doing anything wrong during that time?

A. Well, I know that his property there was attached, and we went one or two meals without anything to eat, there in the camp about twenty miles out from civilization, until the attachment was raised.

Q. Did he make any other arrangements?

A. I don't know how he did square the thing.

Q. Do you know what the ground of the attachment was, or what it was for, or how much the indebtedness was claimed to be, or anything about it?

A. No; I know nothing about it.

Q. But, for a couple of meals you didn't have anything to eat, you say? A. No, sir.

Q. Well, did he share with you in the lack of provisions? Answer that question, please.

A. Yes; I believe he was at the camp at the time. I don't remember; I think it was only one meal that we were short.

Q. One meal only that you were short?

A. Yes, sir.

(Testimony of Albert F. Muchmore.)

Q. Well, do you know of anything else?

A. Nothing only what I have heard.

Q. Well, where did you hear it?

A. At Ovando, in that neighborhood.

Q. And you have heard that within the last two years, have you not? A. Ever since I have known him.

Q. Ever since you have known him?

A. Yes, except this first transaction, that he was in there. I heard nothing about him at that time that I know of.

Q. Well, he paid you for your services didn't he, when you worked for him? A. Yes, sir.

Q. And you know nothing of your own knowledge in any way effecting Mr. Griswold's character, do you?

A. I know nothing except what I have heard.

Q. He has been pretty severely criticised since your whole crowd was indicted under his influence, you think?

A. I think he has, yes, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. Deservedly so, Mr. Muchmore, I suppose you think?

A. Yes, sir.

Q. The counsel spoke about the indictment that was returned against you. You were charged, I believe, with perjury in making your entry is that correct?

A. Yes, sir.

Q. And do you know if that is the same entry that is charged in the bill of complaint in this case, concerning

(Testimony of Albert F. Muchmore.)

which you were questioned, and about which you testified when you were on the stand before?

A. I don't know whether it is or not.

Q. Well, you never made but one timber and stone entry, did you? A. No, sir; I never made but one.

Q. So that as you understand the matter, it is the same entry in the two matters? A. Yes, sir.

Q. Now, you don't know whether—do you know whether Jakways & Faust were called as witnesses before the Grand Jury? A. I don't know.

Q. You were not, were you?

A. No, sir; I was not.

Q. So you don't know of any witness who could possibly appear before the Grand Jury to testify concerning your entry except Mr. Griswold, do you?

A. I know of none.

Q. And do you know of anything that Mr. Griswold does know about your entry of his own knowledge?

A. No, sir, I do not; I don't think he knows anything.

Recross-examination.

(By Mr. MAYNARD.)

Q. Looking over your testimony here, I notice that you stated that you borrowed this money that you made your entry on from Jakways & Faust, is that so?

A. Yes, sir; I think it is.

Q. What is that? A. Yes, sir; I think it is.

Q. Is this the Mr. Faust, of the firm of Jakways & Faust? A. No, sir.

(Testimony of Albert F. Muchmore.)

Q. Mr. Jakways, then, is it?

A. Yes, sir; that is a member of the firm of Jakways & Faust.

Q. I just want to ask you two or three questions in regard to that. Did you do the business for yourself and your brothers?

By Mr. WALSH.—We object to that, for the reason that it is not proper cross-examination, and further, it is utterly aside from any question that we asked the witness.

By Mr. MAYNARD.—Yes, I know, but there are one or two questions that I want to ask the witness.

By Mr. WALSH.—We object to counsel going into it, because his time for presenting the testimony on behalf of the Government has already expired.

A. I did the business for my brother, I think.

Q. For your brother what is his name?

A. Guy—Guy W. Muchmore.

Q. And yourself? A. Yes, sir.

Q. Now, how much money did you get from Jakways & Faust?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination, and it has already been gone into by counsel in the presentation of his case in chief.

By Mr. MAYNARD.—I don't see that it has.

By Mr. WALSH.—Even if it has not, we object to it,

(Testimony of Albert F. Muchmore.)

because it is not proper cross-examination of this witness, and because the time within which the Government must put in its testimony has already expired.

A. I don't remember exactly, but I think my brother and I got eight hundred dollars.

Q. From this Mr. Jakways?

A. No, sir; from the firm; we did the business with Mr. Faust.

Q. And you gave them no note or mortgage?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination of this witness, and further because the time within which the Government must put in its testimony has already expired.

A. No, sir.

Q. Just got it on your word?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination of this witness, and further because the time within which the Government must put in its testimony has already expired.

A. Yes, sir.

Q. And you gave neither a note or a mortgage as security?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination of this witness, and further because the time within which the Government must put in its testimony has already expired.

ALBERT F. MUCHMORE.

(Testimony of Charles A. Jakways.)

Subscribed and sworn to before me this 17th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

CHARLES A. JAKWAYS, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Jakways, how old are you?

A. Thirty-six years old.

Q. Where do you reside, Mr. Jakways?

A. Well, my residence is on my ranch about ten miles west of Ovando.

Q. Are you a member of the firm of Jakways & Faust?

A. Yes, sir; I am the senior partner in that firm.

Q. What is the business of that firm?

A. Merchandising, ranching, stockraising, saw-milling and planing milling.

Q. Where do you carry on the business?

A. Our store is in Ovando. Our merchandising concern is in Ovando, and our ranch is about ten miles west of Ovando. And our milling interests are on the ranch.

Q. And what official position, if any, do you hold, Mr. Jakways?

A. Oh, I am deputy postmaster and clerk of the School District, and United States Commissioner; I guess that is all.

(Testimony of Charles A. Jakways.)

Q. Mr. Jakways, are you somewhat familiar with the public lands in the neighborhood in which you live?

A. Yes, sir; I am quite familiar with them.

Q. How did you acquire that familiarity with them?

A. Well, I have been United States Commissioner there for something like eight or nine years, and have sworn the claimants in their entries and their filings, and final proofs, prepared their papers for them, and have drawn a geat many plats of the country, and things of that kind, and I have also been over the country and carried out the lines and made some lines for surveys more or less. And for the ranchmen I have kept compass and chain and have run their lines for them at various times.

Q. In connection with your merchandising business, Mr. Jakways, have you had anything to do with the banking business?

A. Well, I don't know as it could be called banking, no, it would hardly be called legitimate banking. We run an account frequently with people, run an open account sometimes, and sometimes we carry overdrafts, and sometimes we do not.

Q. With your patrons, the stockmen and rangers who live in that neighborhood, what is the general course of dealing that you carry on with them, and how do your accounts run with them?

By Mr. MAYNARD.—I object to this question, and the subject matter to which it relates, as immaterial and irrelevant, and it is entirely incompetent to disprove any of the averments contained in the defendant's answer, or

(Testimony of Charles A. Jakways.)

to disprove any of the allegations in the complainant's bill of complaint. And if it may be understood that this objection is to the inquiry which shall be made in regard to this subject matter, I will make the objection general and let it stand.

By Mr. WALSH.—It is quite agreeable without constantly interposing objections.

A. Well, our patrons are largely small cattlemen and raisers of small crops of grain. They usually sell their cattle in the spring and in the fall. A great many of them have open accounts, that is, running accounts. They make a sale of cattle and bring in their check to us and turn it over to us and ask us to give them credit for it. Probably at the same time they may be owing us four or five hundred dollars, and sometimes more. Their account runs on probably, and their check, whatever it is, is placed to their credit, and their account runs on, and they sometimes have money to their credit with us, and sometimes they do not. We have an open account with them when we know they are good pay.

Q. Now, did you have any business transactions with Mr. Cobban, during the summer of the year 1899, Mr. Jakways? A. Yes, sir.

Q. I wish you would state what relationship or agency or otherwise, existed between you and Mr. Cobban during that year?

A. None whatever. I was acquainted with Mr. Cobban at that time.

Q. What have you to say as to an agreement existing

(Testimony of Charles A. Jakways.)

between you and Mr. Cobban, either directly or indirectly, by which you were to procure persons to take up timber and stone claims, upon an agreement with them that they were to transfer the claims to Mr. Cobban, in payment of a hundred dollars or any other sum?

A. None whatever.

Q. Do you know Chauncey L. Griswold?

A. Yes, sir.

Q. How long have you know him?

A. I am not sure that I can say; it is six or seven years, possibly eight years. I don't remember exactly when I first met him.

Q. Do you know one Lelia T. Bryan, Mr. Jakways?

A. What is the name?

Q. Lelia T. Bryan. A. No, sir.

Q. Do you remember having heard of her?

A. I heard of her; yes.

Q. In what connection did you hear of her?

A. I understood that she taught school at Clearwater one summer.

Q. You had no personal acquaintance with her?

A. I never saw her to my knowledge.

Q. Did you ever transact any business with her?

A. No, sir; none whatever in any way.

Q. What conversation if any, did you ever have with Chauncey L. Griswold concerning Lelia T. Bryan, relative to any entry she may have made, or was to make under the Stone and Timber Act?

A. None whatever.

(Testimony of Charles A. Jakways.)

Q. What have you to say, Mr. Jakways, as to Mr. Griswold, having during the summer of the year 1899, given directions to you that this land, meaning the land taken up by Lelia T. Bryan, under the Stone and Timber Act, should be transferred to Mr. Cobban?

A. I don't think I ever saw her claim. The only recollection I have of knowing anything about her, or hearing anything of Lelia T. Bryan, was receiving a letter from her a year ago this spring, enclosing her photograph and applying for our school. I think that is the first I ever heard of her. I remember that distinctly.

Q. What have you to say as to Mr. Griswold having given you those directions?

A. He never gave me any directions.

Q Who is Mrs. May Hawthorne?

A. My sister.

Q. Now, Mr. Jakways, I wish you would state whether Mrs. Hawthorne made an entry under the Stone and Timber Act? A. She did.

Q. Where does she live?

A. She lives at Lincoln, Illinois.

Q. What was the occasion of her being in the country in 1899?

A. She came up here to visit myself and family, and my brother.

Q. How long did she visit with you?

A. Three months, I should judge; she came in June, sometime, about the middle of June, and she went away in September, about the middle of September.

(Testimony of Charles A. Jakways.)

Q. Now, how did she come to take out a Timber and Stone Claim, Mr. Jakways?

A. Well, after she got out here, I asked her if she didn't want to take up a timber and stone claim. There were a great many being taken up, and I told her it would probably be a pretty good investment. She inquired of me about what would be necessary for her to do; she didn't know anything about it; she had always lived in the East where there is nothing to be taken up, and where the lands have all been appropriated. I tried to explain the matter to her and the methods necessary to acquire title to a timber claim. She said she had no objection to it, and I took her and showed her a claim in section 4, township 15 north, range 12 west. I think it was the southeast quarter of section 4, and she went to Helena and filed on it. And on the 15th day of September, I believe it was, left my place and went to Helena, as I supposed—I wasn't with her, and proved up and went on home.

Q. Went on home to Lincoln, Illinois?

A. Yes, sir; to Lincoln, Illinois.

Q. What arrangement, if any, did you enter into with your sister in your own behalf, or in behalf of anybody else, at any time prior to the time that she made final proof upon the land, for the sale or transfer of the same?

A. There was no arrangement made for the sale or transfer of the property, further than this: Before she left to go home I told her that I believed her claim was

(Testimony of Charles A. Jakways.)

as good a claim as my brother's claim was, or Mrs. Faust's claim, which I believe about that time had been deeded to Mr. Cobban for a consideration of fifteen hundred dollars each, and I told her that she could get as much; she could talk the matter over with her husband, and if they desired to convey the land to Mr. Cobban, I would give her a blank—a deed in blank, and if they desired to transfer their land to Mr. Cobban, to execute the deed and send it back, and if he wanted to give that much for it, they could sell it to him, and if he didn't I would destroy the deed. She took the deed with her home, made out in blank, and sent it back to me.

Q. And sent it back to you? A. Yes, sir.

Q. And did you sell the claim? A. Yes, sir.

Q. To whom did you sell it?

A. To Mr. Cobban.

Q. For what amount?

A. Fifteen hundred dollars.

Q. Now, what arrangement did you or Mrs. Hawthorne have with Mr. Cobban, that upon the making of final proof and the receipt of the receiver's duplicate receipt, you were to convey the land to Mr. Cobban?

A. Not a thing whatever. My sister, I believe, never saw Mr. Cobban. My impression is that she never did.

Q. From what source did the money come, Mr. Jackways, to pay for the fees and expenses of proving up on the claim of Mrs. Hawthorne?

A. Jakways & Faust loaned it to her.

Q. And when was it repaid?

(Testimony of Charles A. Jakways.)

A. After the claim was sold.

Q. I wish you would tell, now, Mr. Jakways, whether you ever had any conversation with Chauncey L. Griswold, concerning the entry made by your sister, Mrs. Hawthorne?

A. Why, I may have told him that she made an entry; I don't know about that.

Q. Have you any recollection about that?

A. None whatever; no recollection of any conversation whatever in regard to it.

Q. What, if anything, did he have to do with her claim?

A. Nothing whatever; not a thing in the world.

Q. Didn't he put her on the claim?

A. No, sir; he was one of her witnesses, I believe, on the final proof.

Q. Now, what you have to say as to whether Mr. Griswold—as to telling Mr. Griswold, that you had a sister living in the East that would like a claim, and that she was coming here on a visit, and Mr. Griswold saying to you that she could go on and take up a claim upon the same conditions that the rest of these other entrymen and entrywomen did, which conditions he stated to you to be that Mr. Cobban would furnish the money for all expenses in acquiring title from the Government to this land, and a hundred dollars to each of the entrymen and entrywomen, if he, Mr. Griswold approved of the selection?

A. Never any such conversation.

(Testimony of Charles A. Jakways.)

Q. When did you say your sister came out to Montana, Mr. Jakways?

A. I think it was somewhere near about the middle of June, that is my recollection about it; I cannot remember the date, but I think it was somewhere about the 17th or 20th of June that she arrived.

Q. Now, what have you to say as to a further conversation taking place between yourself and Mr. Griswold, in which you told Mr. Griswold that your sister, Mrs. Hawthorne, was going to take up a claim and make final proof, but that you thought a hundred dollars wasn't enough; that you had a very good claim for her that you were holding under some law, and being a United States Commissioner, and that you would put her onto it as soon as she came from the East, and that in consideration of that, you thought that she ought to get a little more than a hundred dollars. Whereupon Mr. Griswold said to you, "That is all I am authorized to pay by Mr. Cobban. You can see him yourself." What have you to say as to that conversation taking place?

A. No such conversation at all. When Griswold came up there, locating timber first, and up to the time that Mr. Cobban came up, which was some time in July, I think, I didn't know that Mr. Griswold represented Mr. Cobban; didn't know that he represented anybody, and didn't know who he represented.

Q. What did he say about that matter?

A. Well, at first I asked him who was wanting to buy the timber, and first he said he thought it was being

(Testimony of Charles A. Jakways.)

bought for the Largey estate, or by the Largey estate, and that he—and he referred to the Largey estate as the people that were buying it. He also said that there was some Michigan outfit, and some Wisconsin outfit, Weyerhausers, that were after timber, and it wasn't until after Mr. Cobban came up there and drove up there that I knew that Mr. Griswold had been up there in the interest of Mr. Cobban. We required no assistance from Mr. Cobban in the matter at that time, or anybody else.

Q. Now, about what time was it, according to your recollection, that Mr. Griswold first came to your store at Ovando?

A. Well, I didn't see him at the store first. The first time I saw him in connection with this business, in 1899, I think I met him on the road. I am sure I did, but I cannot recollect where it was. It seems to me I was going toward the Clearwater country and met him That is my recollection about it, and he stopped me and said that he had seen some advertisement in the "Garnet News" of notice of final proof on timber and stone entry of my brother, L. S. Jakways, and Mrs. Faust, and asked me if I knew anything about it. I told him that they had filed on the claims, and were to prove up in June or July. I don't know when the proof was made, and then he sprung a big story to the effect that he represented all the money on earth, and wanted all the timber on earth, and wanted to know if he could get these claims, and I told him I didn't know anything about it. That is what there was to that little conver-

(Testimony of Charles A. Jakways.)

sation on the road, and that was all there was and he went on, and I did too.

Q. What have you to say, Mr. Jakways, as to Mr. Cobban having left money with your firm or at your store, from which you should supply parties that desired to make entries upon timber claims, and prove up on them, with funds for that purpose.

A. He never left any money for that purpose to my knowledge.

Q. Did you have any conversation in substance and to that effect, with Mr. Cobban at your store?

A. No, sir; I am not at the store very often, Mr. Faust is in charge at the store, and I live on the ranch. I am there frequently, however.

Q. Now, what have you to say as to Mr. Cobban having given you at the store on one or two occasions when he was there, checks, and saying to you, or to Mr. Faust, that if you didn't have funds sufficient out of the funds left there by him, and you would use your own private funds, Mr. Cobban would reimburse you for the amount that you paid out in the case of these entries, which he had directed you to cause to be made?

A. No, nothing of that kind. The only instance I remember of Mr. Cobban paying any money into our store at all, was giving us a check for some supplies that he had purchased there. I remember an instance of that kind, but I don't know anything about any other instance. We borrowed some money from Mr. Cobban at one time.

(Testimony of Charles A. Jakways.)

By Mr. MAYNARD.—What is what?

The WITNESS.—I say we borrowed some money of Mr. Cobban at one time on our own account.

Q. Do you know Alfred Stewart, Mr. Jakways?

A. Yes, sir; I know him very well.

Q. How long has he lived there, Mr. Jakways?

A. How long have I lived there?

Q. No; how long has he lived there?

A. I think he has been there about six or seven years. He worked for us there on the ranch, and drove a stage for us, for a while; that is my recollection.

Q. He has a homestead in that neighborhood, hasn't he? A. He has a homestead; yes, sir.

Q. Have you had any dealings with him at any time other than those you have spoken of?

A. He has traded with us a great deal and I have bought cattle of him.

Q. And the course you pursued with Mr. Stewart is the same as you have heretofore described as having been pursued generally? A. Yes, sir.

Q. And just exactly how were your transactions carried on with him?

A. Why he was in our employ. We paid him forty dollars a month and his board for driving stage, and thirty-five dollars a month and his board on the ranch. His wife and family came to our store and purchased supplies, when in need of them, and when he finished his work he was credited with his wages in the store.

(Testimony of Charles A. Jakways.)

Q. And you say since he has been ranching on his own account? A. Yes, sir.

Q. What source of revenue has he that would go to establish an account that he had with you, and to have an amount placed to his credit or otherwise?

A. Well, he has some cattle and raises crops every year, vegetables, and so forth. He is quite a gardener, and he raises vegetables and grain and supplies the logging camps with vegetables.

Q. And where do the receipts from his various resources go?

A. I suppose he used it to pay his bills. He sold his cattle. They didn't eat any meat; they are Seventh Day Adventists, so that he sold his chickens and his cattle.

Q. Do you know the claim that Mr. Stewart took up under the Stone and Timber Act?

A. Yes, sir.

Q. And do you remember being at or near the claim at any time in company with Mr. Griswold and Mr. Cobban?

A. Yes, sir; I looked over the claim with him.

Q. State the circumstances of your being there, Mr. Jakways?

A. I went there to see how much timber there was on the claim. Well, the original circumstances were these: The claim that he desired to take up had timber on it, and there was pretty good grass on it, too, good feed for cattle, and Stewart mentioned to me that he would like to have that piece of land for pasture, and he

(Testimony of Charles A. Jakways.)

didn't know whether he was going to be able to stand the cost of taking it up under the Stone and Timber Act, and asked me if, in my opinion, there was enough timber on the claim to clear it and pay the cost, if he could sell the timber. I told him that I was not a timber estimator, but that if I could catch Griswold up there some time that I would have him look at the claim and form an idea of how much timber there was on it. And at this time that you speak of in your question, Griswold and Mr. Cobban and myself went over there, and if I recollect correct about it, we met Stewart taking his children to school, I think, in a buggy, and he said he would be back shortly, and we went on over and looked it over, and if I recollect right, Mr. Griswold stood on one side of the tract, and Mr. Cobban and myself, I think, walked on the other tract—walked on one side of the claim, and we walked over. Mr. Griswold and Mr. Cobban had some conversation about how much timber there was on the claim. I heard Mr. Griswold say that there was about fifty thousand feet; I think less timber on the claim than Mr. Cobban thought there was. I heard that part of the conversation and no other. I didn't hear any conversation between Griswold and Stewart, for they were separated. That is the time that we were on one side of the claim and they were on the other.

Q. Now, I wish you would state whether at that time there was an agreement entered into between Mr. Cobban and Mr. Stewart, to the effect that Mr. Stewart was

(Testimony of Charles A. Jakways.)

to go on and complete final proof of his piece of land under the Timber and Stone Act, and give Mr. Cobban a contract, or a deed for the timber that was on the claim, and that Mr. Stewart was to have the land for pasture purposes?

A. No, sir, I heard nothing of the kind, and I don't think anything of the kind could have taken place, from the fact that I recollect an incident at the time. Mr. Griswold and Cobban were talking about the probable amount of timber on the claim, and they drew a little apart, and Stewart asked me who Mr. Cobban was, and I told him it was Mr. Cobban, and almost immediately afterwards we went away. There was no conversation there whatever, and if they had any conversation there at that time, they had it and I didn't hear it.

Q. What have you to say as to such a conversation having taken place in your presence and hearing?

A. There was nothing of the kind.

Q. Now, what conversation did take place in regard to Stewart's entering the land and Cobban eventually getting the timber and he retaining the land for pasturing purposes?

A. Well, there was no conversation at that time. I had a conversation with Stewart afterwards, and he asked me how much timber there was, and I told him I thought there was about five hundred thousand or five hundred and fifty thousand feet on the claim. Timber had been selling there at a price of about a dollar a thousand, somewhere along there. A good many of

(Testimony of Charles A. Jakways.)

them had been sold at that price, based on an estimate of the amount of timber on the claim, and that was all that there was talked of between Stewart and I, as to the amount of timber there was on the claim. I had fulfilled my agreement withh im to find out how much timber there was on it.

Q. What have you to say, Mr. Jakways, as to Mr. Cobban then stating to Mr. Stewart, that he should go to Jakways & Faust's store in Ovando, and obtain the money to pay his expenses for making his filing, and making final proof on this land, and that he afterwards deposited the money there to make his final proof?

A. There was nothing of the kind.

Q. What have you to say as to whether Mr. Cobban did deposit with you any money with which to pay for the Stewart entry?

A. Never deposited any money, that is, for the purpose of making final proof on Stewart's claim. You understand I am not entirely familiar with the facts and circumstances and the business in the store at Ovando.

Q. So far as you know, it was not done?

A. So far as I know it was never done, no, sir.

Q. Do you know Dr. Elijah Hoyt, Mr. Jakways?

A. Yes, sir, I do.

Q. I wish you would—before we pass the Stewart claim, I would like to ask you, do you know anything about Mr. Stewart's subsequently conveying the timber upon his land to Mr. Cobban?

(Testimony of Charles A. Jakways.)

A. I understood that he did so. I don't know anything about the details.

Q. You had nothing to do with the transaction?

A. No, sir, I had nothing to do with the transaction.

Q. What conversation, if any, do you remember having had concerning the claim of Dr. Elijah W. Hoyt and his wife?

A. I don't remember any conversation that we had in regard to it. I remember going over these two claims with Griswold to look at the timber, and if I remember right, we took dinner at Doctor Hoyt's that day. We went out there with Griswold's estimate, I think, and took dinner, and afterwards went out and looked over the timber and figured upon how much there was upon it. I remember Griswold remarking what lovely timber there was on it, but there was no conversation with Doctor Hoyt. I never had any talk with Doctor Hoyt. The only talk we ever had about it was the day he deeded.

Q. I asked you concerning any conversation with Griswold concerning the Hoyt claim.

A. I don't recall any conversation in regard to his transfer of it at all. I remember one little conversation occurring something about the tract of land that Hoyt was filing on being forty of it, or an eighty of it, I think—had been taken under an Indian allotment, I think, or something of that kind; I don't remember exactly what it was. I recall that conversation with Griswold, but nothing else.

(Testimony of Charles A. Jakways.)

Q. I wish you would tell us what you have to say about having had a conversation with Mr. Griswold in which you stated to him that you could get Elijah W. Hoyt's claim for a hundred dollars, or the two claims—meaning the claim of himself and wife, for a hundred dollars over and above the expenses?

A. I never had any such conversation with him at all, and knew nothing about the matter.

Q. What have you to say as to having said also to Mr. Griswold that you could get the two claims for a hundred dollars and expenses, and that you would turn them over to Mr. Cobban for a good deal more than that, if he, Griswold, would keep still that you would divide the surplus with him?

A. No, sir, there was nothing of the kind thought of.

Q. How about it being said, without it being thought of?

A. Nothing of that kind was ever said.

Q. Now, as a matter of fact, how much was paid for that claim?

A. I understood that he was paid seventeen hundred dollars for the two claims; the consideration named in the deed was two thousand dollars.

Q. Did you ever have any talk with Dr. Hoyt or his wife, in the course of which they agreed to transfer the claims for a hundred dollars?

A. No, sir, never.

Q. The claims were rather more than average good claims I should judge, Mr. Jakways?

(Testimony of Charles A. Jakways.)

A. I considered them so, yes, sir. They were not only very good timber claims, but reasonably handy to driving water, which added very much to their value.

Q. Do you know Mr. Nels O. Opsata?

A. Yes, sir.

Q. What have you to say as to your course of dealing with him, Mr. Jakways?

A. I presume that we dealt more liberally with Mr. Opsata than any other customer that we ever had. He is a warm personal friend of mine, and I take especial delight in giving him every favor possible in a passing way.

Q. How do you find him as to honesty and integrity?

A. He is one of the most honorable men I ever met.

Q. Now, what have you to say about a conversation with Mr. Jakways—with Mr. Griswold, in which you told him that you could get Opsata to enter a timber and stone claim, which he did, and take into consideration the furnishing of money necessary to obtain the title and that then Mr. Opsata would convey the timber to Mr. Cobban, and hold the land himself for pasturing purposes, in consideration of Mr. Cobban furnishing him with the money to make final proof?

A. I never had any such conversation with him at all.

Q. Now, what do you know, Mr. Jakways, about the Opsata entry?

A. Well, I know that Opsata told me that he would like to have that piece of land which joined right on to

(Testimony of Charles A. Jakways.)

his homestead and was pretty fair pasture land, and I said, "Nels, if you want to file on it, I will loan you the money to prove up on it, and you are welcome to it." And he went on and filed on it, and proved up on it, and got the money from us to prove up on it with, and finally deeded it to Mr. Cobban. I was a witness to that transaction and I saw it deeded over.

Q. Now, prior to the—

A. (Witness continuing.) —deeded the timber, but he still retained the land and simply deeded the timber.

Q. Prior to the time that he executed the deed conveying the timber, what connection, if any, did Mr. Cobban have with the entry? A. Have with what?

Q. Have with this entry of Opsata's?

A. He had none whatever; I don't think he ever saw Opsata at all; he did not to my knowledge.

Q. Well, wasn't it his money that you let Opsata have for the purpose of proving up on his claim, Mr. Cobban's money, left with you for that very purpose?

A. No, sir.

Q. Whose money was it?

A. It was Jakways & Faust's money until he borrowed it, and then it was his; he was charged with it on the books.

Q. Now, what conversation, if any, did you have with Mr. Griswold, concerning the entries made by Albert Muchmore, Guy W. Muchmore, Oliver E. Muchmore, or Elizabeth A. Muchmore?

A. I never had any conversation with him that I

(Testimony of Charles A. Jakways.)

remember of. I may have spoken of the claims to him, but I don't know what it could have been about, because I don't know now what they were. I knew nothing whatever about the Muchmore's claims.

Q. What have you to say as to having had a conversation with Mr. Griswold—that the Muchmores, or some of them, were owing you—and that you would like to have him get claims, and that they would be willing and glad to convey to Mr. Cobban the claims for a hundred dollars each over and above the expenses of proving up on the lands?

A. I never had such a conversation. I never had a conversation with either of the Muchmores in regard to their claims, and never said anything to them about it.

Q. What have you to say as to having had a conversation with Mr. Griswold, in which you told him you were looking after the Muchmore claims?

A. I never had such a conversation.

Q. What, if anything, did you have to do with the Muchmore claims?

A. Nothing whatever, not a thing in the world. I don't know how much they got for them.

Q. Do you know Mr. Doney and his wife, who live up in your neighborhood, Mr. Hakways?

A. Yes, sir.

Q. Have you ever had any dealings with them?

A. Yes, sir.

Q. And how was the dealing with them carried on

(Testimony of Charles A. Jakways.)

as compared with that of the other gentlemen that you have spoken of?

A. Well, in a very similar way, a very similar way. We have run an open account with Mr. Doney, and we have had security from him, on his account, and on his cattle, at one time, and he afterwards paid it off.

Q. You found him reliable?

A. We did, yes, sir; we always found him a man that paid his bills. We have dealt with him for ten years. He is quite an inventor, by the way; he has just invented a patent hay loader, and a side delivery rake.

Q. What conversation, if any, did you have with Mr. Griswold, touching the entry made by Mr. Doney or his wife, under the Timber and Stone Act?

A. We went over the timber on Doney's homestead, it seems to me—yes, went over Doney's homestead on the same day that we were on the Doctor Hoyt claim, and that is the only timber of Mr. Doney's that we had and conversation about. I don't remember now whether Mr. Doney had proved up on his homestead or not; my recollection is that he had not; but I am not sure in regard to that. I know that later he sold his timber on the homestead, but I don't know anything about his timber claim, or his wife's; I don't know where they were.

Q. What have you to say, Mr. Jakways, as to your having made any arrangement with Mr. Doney and his wife, whereby they were to take up a timber claim in

(Testimony of Charles A. Jakways.)

the interest of Mr. Cobban, and that they were afterwards to convey to him?

A. I never did; I don't know anything about it.

Q. What have you to say as to having any conversation with Mr. Griswold, in substance, to that effect?

A. Never had any conversation with him about it.

Q. How long did you say you had known Mr. Griswold?

A. I am not quite sure what year it was he came in there, but it strikes me it was six or seven or eight years since I saw him first.

Q. What occasion have you had to meet him since that time?

A. Oh, we have done considerable business with Mr. Griswold one way or another. He had a contract for ———, some state land on Salmon creek, he stated, for a man by the name of Mickels. Mickels' contract was a pretty hard job, and he thought by buying his supplies of us and saving considerable, he would come out all right. It was during a season of the year when the roads were bad. I remember going over the timber that he was to cut, and Griswold and the man was confined to buying supplies of us, and Mr. Griswold said he was perfectly willing to buy supplies of us—

Q. We don't care to go into the details of the matter, Mr. Jakways.

A. Very well.

Q. After you got acquainted with him, did you continue that acquaintance, and have you seen him since?

(Testimony of Charles A. Jakways.)

A. Yes, sir, have seen him frequently.

Q. How far is his home from yours—how far was it when he lived up in that region of the country from your place?

A. About ten miles from my home, something like that.

Q. Is that such a distance as permits general acquaintance among people in that neighborhood?

A. Yes, sir, frequently drive out after supper and back at bedtime.

Q. Do you know what the general reputation of Chauncey L. Griswold is in that vicinity for truth, honesty and integrity? A. I think I do, yes.

Q. What is it?

A. Why, he is generally considered crooked.

Q. Do you know Mr. L. A. Wells, who lives up there?

A. Yes, sir, very well indeed.

Q. How long have you known him?

A. About ten years.

Q. How far from your place does he live?

A. Just a mile.

Q. A mile, you say?

A. Yes, just a mile north. He lives on an adjoining ranch.

Q. What kind of a reputation for truth and veracity does he enjoy in that neighborhood, Mr. Jakways?

A. Well, he is known over the Blackfoot valley as the most notorious liar in that country, and I think he enjoys the reputation; I am sure he does.

(Testimony of Charles A. Jakways.)

Q. Oh, yes, there is another question. Mr. Jackways, do you remember of a man that was working for Mr. Wells in the summer of 1899, coming to see you about taking up a timber claim

A. Taking up a timber claim?

Q. Yes, sir.

A. No, I don't remember coming to take up a timber claim. They cannot file on timber claims before me.

Q. Well, do you remember about such a man coming to you to talk with you about the opportunity to take up a timber claim?

A. Yes, sir, I believe I do.

Q. And what have you to say as to your having told him with reference to a claim that he desired to take up, that he couldn't take it up for some reason or other, on account of some law, and then going and locating Mrs. Faust on it?

A. I remember the circumstances clearly. The man's name is Fred Hall; that is the man that is referred to. Of course there is a number of parties come in there to my place every few days to inquire about taking up timber lands, but if I understand the situation correctly, this man's name was Fred Hall. He came in and asked me if the lands embraced in this new survey was open to filing. There had been a notice posted there that the plats would be filed about the 18th of February, 1899, and I told him and referred him to the notice, and that the plats would be filed on the 15th

(Testimony of Charles A. Jakways.)

of February, but that as I understood the matter, the state had the right to exercise its right, and if that was the case, it wouldn't be open until the 15th of April. The period within which the state had to make its selections was sixty days, and the plats were to be filed the 15th of February, so that would make it the 15th of April. I recollect of a conversation with Fred Hall.

Q. That is the extent of your conversation with him, isn't it?

A. Yes, I don't recall that he referred to any special tract of land that he wanted to file on.

Q. What region did this new survey that was approved or was to be approved February the 15th, 1899, embrace, Mr. Jakways?

A. Well, it embraces a portion of township 15 north, of range 12 west; that was unsurveyed. And I think a portion of township 15 north, of range 11; I believe that is all, in that immediate vicinity. Although I think there was one township, or one or two parts of townships embraced in it across the Blackfoot river, but I wouldn't be positive about that.

By Mr. WALSH.--That is all of the direct examination.

By Mr. MAYNARD.—I would like to have an opportunity to look over the testimony given on the direct examination of the witness, as I expect to be at least half a day upon the cross-examination, and it may be that if I have an opportunity to consider the testimony,

(Testimony of Charles A. Jakways.)

that I can expedite matters so as to save probably an hour on his cross-examination. I want to have an opportunity also to look over the testimony of the witnesses to whom he has referred, and I cannot do it at this time, without having an opportunity to get at the testimony and look it over.

Thursday, April 17th, 1902, 10 A. M.

Rehearing resumed pursuant to adjournment.

C. A. JAKWAYS, recalled for cross-examination.

Mr. MAYNARD.—I desire to say to counsel on the other side that I had hoped to get the testimony that Mr. Jakways gave on the civil suit between Mr. Griswold and Mr. Cobban here by the time I entered on the cross-examination of Mr. Jakways, but it is not here, and I shall be compelled to recall Mr. Jakways for examination after I get this testimony, and I cannot complete it, and I do not know as I can do very well without it. I would leave the matter open to counsel as to whether or not under the circumstances they will allow Mr. Jakways to go home, and I can have it here undoubtedly in two or three days.

Mr. WALSH.—Well, we won't keep Mr. Jakways here while you prepare for your cross-examination; when you get through he will go.

Mr. MAYNARD.—Well, I don't want to excuse him.

Mr. BICKFORD.—The position we take, if your Honor please, is that the cross-examination of Mr. Jack-

(Testimony of Charles A. Jakways.)

ways under all the rules of proceedings would be upon the testimony which he has given in this hearing, and that if counsel desires to introduce other evidence in rebuttal of his testimony as given here, that he could do that, but that otherwise and as far as this examination is concerned, under the rules of the introduction of evidence Mr. Jakways must be interrogated on the testimony which he has now and at this time given.

Mr. WALSH.—I think we have a copy of the testimony given at the civil trial; if we have, you are welcome to the use of it on cross-examination of Mr. Jakways, but it is not fair to Mr. Jakways to ask that he be held here for two or three days in order for you to prepare for the cross-examination.

Mr. MAYNARD.—No, all I wanted is that he might return home and return again.

Mr. WALSH.—Of course, counsel might fairly anticipate that Mr. Jakways would be called as a witness.

Mr. MAYNARD.—Yes, but I tried to get this testimony here and I have not got it. I did not know, exactly when Mr. Jakways would be called, and all I wanted to use it for was to lay the foundation for rebutting proof and for the purpose of impeachment. Now, if you will furnish me with that testimony—

Mr. WALSH.—We will furnish you with a copy of the testimony, but you are asking too much, to ask Mr. Jakways to be kept here for two or three days just to enable you to get matter on which he might be cross-ex-

(Testimony of Charles A. Jakways.)

amined. As soon as Mr. Cobban comes we will know if we have that testimony.

(By Mr. MAYNARD.)

Q. Mr. Jakways, how old are you?

A. Thirty-six.

Q. How old is your partner, Mr. Faust?

A. Between 34 and 35, I believe.

Q. How long has your partnership been in existence? A. About 10 years.

Q. Are there any other members of the partnership besides yourself and Mr. Faust?

A. No, sir.

Q. Just the two of you? A. Yes, sir.

Q. And the business has been carried on during all of the time that the partnership has been in existence at Ovando?

A. Yes, sir, under the firm name of Jakways & Faust. I was in business there with another partner for four or five months before Mr. Faust came into the business.

Q. You came from Michigan, did you not?

A. Originally, I did, yes, sir.

Q. Where had you settled before commencing business in Ovando?

A. I was agent for the Northern Pacific at Drummond station.

Q. Station agent at Drummond?

A. Yes, sir.

Q. Then you left that position and started this business with Mr. Faust?

(Testimony of Charles A. Jakways.)

A. No, I left the position at Drummond and went into business with a man named Sloper at Ovando; we had a mercantile establishment there, and Sloper sold out to Mr. Faust that same year, in November, I believe.

Q. Where had Mr. Faust been engaged in work before forming the partnership?

A. Well, for some five or six months before Mr. Faust had been in Minnesota with his people, and I am not sure that he was engaged in any business whatever during those five years or six months, but during the greater part of my term as agent at Drummond, he worked in the office there as check clerk at the station at Drummond and also as agent for a short time while I was absent.

Q. He was check clerk at Drummond?

A. Yes, sir.

Q. And you were station agent?

A. Yes, sir.

Q. And just where is Drummond?

A. Drummond is on the Northern Pacific, about 20 or 21 miles west of Garrison, between Garrison and Missoula.

Q. How much of a place is it?

A. Oh, it is a small town, about 150 population, something like that—I couldn't say. The Phillipsburg branch makes out from there and it is a sort of a transfer point.

Q. What was the first kind of business that you engaged in at Ovando? A. Mercantile business.

(Testimony of Charles A. Jakways.)

Q. What would be known as a country store?

A. Yes, sir.

Q. Did either of you at the time have any capital to start with? A. Yes, sir.

Q. How much?

A. I think something like $2,000, if I remember right; I am not quite sure, but something about that, though.

Q. Both of you together? A. Yes, sir.

Q. And that is what you started your business with at Ovando about 10 years ago? A. Yes, sir.

Q. As young men of 25 or 26 years of age?

A. Something like that, yes, sir.

Q. Now, besides running this country store in this place of Ovando of 50 inhabitants or thereabouts, what did you say you had been doing?

A. Before that?

Q. No, besides running the store during these 10 years.

A. Oh, during the 10 years we have been engaged in ranching, milling, livestock raising

Q. Engaged in ranching; what do you mean by that?

A. Well, on a ranch. We own a ranch and raise crops and raise cattle.

Q. Both of you together? A. Yes, sir.

Q. Is it in your joint partnership name?

A. The entire concern is joint.

Q. How much of a ranch is it?

A. Oh, there is between 1,500 and 2,000 acres; it is

(Testimony of Charles A. Jakways.)

not all titled land, some of it is railroad land under contract not yet paid for, and some of it is leased land, and more that we own altogether, have title to.

Q. How much of it is titled land?

A. Let me see—I think there is only 240 acres that the title is complete now; there is one railroad section, the contract is completed next year, and there is one I think runs two or three years longer, and then there is three-quarters of a section under lease from the State.

Q. That constitutes your ranch, with your house, I suppose and some improvements on it?

A. Oh, yes, it is all fenced.

Q. The whole 1,500 acres?

A. Yes, sir, all of it fenced.

Q. How much of it is improved land, cleared?

A. Oh, it is practically all cleared, but what we term improved land in that region is land that we can raise crops on, land that is under ditches, that we can irrigate and raise crops on. I don't know—there is 300 or 400 acres, I should judge, I could not tell exactly.

Q. Do you say you have got a mill there?

A. Yes, sir.

Q. What kind of a mill?

A. Sawmill, planing-mill and chop feedmill.

Q. Besides the store at Ovando and this ranch, what else have your firm?

A. Well, nothing only our business interests; I can't think of any other business that we have got; that is

(Testimony of Charles A. Jakways.)

all except some little minor offsets. Mr. Faust is a notary public.

Q. I don't care anything about your notary public office. I am talking about your business interests.

A. Well, that is all of our business.

Q. As I understood you yesterday you spent most of your time out on the ranch.

A. Yes. My family live on the ranch.

Q. That is your home out there?

A. Yes.

Q. How far is it from Ovando?

A. About 10 miles.

Q. Of what does your family consist?

A. A wife and two children.

Q. What is your wife's first name?

A. Mabel.

Q. And Mr. Faust lives in Ovando, and his wife's name is what? A. Cora.

Q. When did you first interest yourself in taking up claims under the different Government acts?

A. I cannot tell you exactly. About the first knowledge I got of anything connected with the land business was at the time a contest was held at Ovando over a piece of desert land, and I was justice of the peace there, and was commissioned by the land office. At that time, Mr. Langhorn of Helena was one of the attorneys in the case, and suggested one day to a number of people there that they petition the United States Court to have a United States Commissioner appointed over there for

(Testimony of Charles A. Jakways.)

the convenience of the people, and following that petition I was appointed. Since that time I have had more or less to do with land matters.

Q. That is as Commissioner of the Land Office.

A. Commissioner of the United States District Court.

Q. What has that got to do with land?

A. Under certain acts entrymen can swear to their filing papers and their proof papers before the United States Commissioner, and save them a trip to Helena and the expense there.

Q. Do I understand that your interests then in these public lands was purely of an official character?

A. Yes, sir, entirely so.

Q. When were you appointed such Commissioner?

A. I don't know; I can't remember; about 8 or 9 years ago, something like that. I completed one term and was appointed for a second one, and I can't remember just when it was.

Q. Did you take up a claim under the Homestead Act?

A. Yes, sir.

Q. Did you take up a claim under the Stone and Timber Act? A. Yes, sir.

Q. Did your wife? A. Yes, sir.

Q. Did your brother? A. Yes, sir.

Q. And your sister?

A. Yes, sir; and my partner and my partner's wife also.

Q. Is that all that you know of that took up claims connected with your family or relatives?

(Testimony of Charles A. Jakways.)

A. I believe it is; yes, sir.

Q. Where is your father living?

A. My father lives in New Carlisle, Indiana.

Q. Did he come out there?

A. Yes, sir; he came out there three years ago this summer and visited with me.

Q. That was in 1899? A. Yes, sir.

Q. The same time that your sister came from Illinois?

A. They came together; yes, sir.

Q. Is your mother living? A. Yes, sir.

Q. Did she come, too? A. No, sir.

Q. They arrived in Ovando in June, 1899, didn't they?

A. Yes, sir.

Q. Do you remember the date?

A. No, I don't.

Q. Didn't your father return with your sister?

A. Yes, sir.

Q. And they left Helena on the 16th of September?

A. To the best of my knowledge they did; I don't know when they left Helena. They left my home, I think, on the 13th or 14th, I am not sure now; I believe, though, that they did leave Helena about that time, although I was not there and don't know.

Q. When did you prove up on your claim?

A. What claim?

Q. Under the Stone and Timber Act?

A. I can't tell you; it is too long ago for me to remember. I couldn't even tell you the year. It must be six or seven years ago; I don't know.

(Testimony of Charles A. Jakways.)

Q. When did your wife prove up?

A. I have forgotten whether it was the same year or not that she proved up; I am under the impression it was, although I cannot remember; it is so long ago.

Q. But it was several years before 1899?

A. Oh, yes; it was before that.

Q. But your brother and your sister and your partner's wife took up their claims in 1899?

A. Yes, sir.

Q. You knew of the fact that there were a great many claims being taken up under the Stone and Timber Act during this season of 1899, didn't you?

A. Yes, sir; I knew there were a good many claims being taken; I saw the advertisements in the "Garnet News" and other ways.

Q. How far was the "Garnet Mining News" published from Ovando?

A. I don't know, twenty-five or thirty miles, something like that.

Q. You were in the habit of taking it, were you not?

A. Yes, sir. The paper came to me at the office; there were a great many homestead advertisements in there that the proofs would come before me, and they sent me a copy of the paper.

Q. When did you first meet Mr. Cobban?

A. I cannot remember the date, but it is my impression that it was in July, 1899, the first time I saw him.

Q. The first time that you ever met him?

(Testimony of Charles A. Jakways.)

A. Yes, sir; the first time that I had ever seen him that I know of.

Q. Where did you meet him?

A. At my ranch, at my house at the ranch; right in front of my house.

Q. He was accompanied by his wife, was he not?

A. I believe he was; yes, by his wife and his boy.

Q. How long a time before his coming to your ranch had you seen Mr. Griswold in regard to Cobban's buying land?

A. It was the first I knew, that time that I speak of Cobban coming there was the first time I knew that there was any business connection at all of any kind between Mr. Cobban and Mr. Griswold. I did not know who Mr. Griswold represented until that time. I understood that he represented somebody, but he always spoke of the matter as the people I represent and that was all I could get out of him.

Q. So you learned from Mr. Cobban that Mr. Griswold was working for him?

Q. How long a time did Mr. Cobban stay at your ranch at that time?

A. Probably ten or fifteen minutes, I don't think any longer.

Q. What did he come there for?

A. I don't know; I met him and we talked, had a general conversation. I don't remember what we talked about now, I don't recall the conversation at all. He went away from there and went up to Ovando, and I went

(Testimony of Charles A. Jakways.)

up there the same day, I believe, and saw him again there.

Q. Well, he had a talk with you at that time and place in regard to what he was doing up in that country, did he not?

A. I believe he did, yes, but I don't recall the conversation at all.

Q. You don't recall any of the conversation?

A. No. I remember that that was the time that I met him first, that is all. He may have had conversation in regard to timber matters, I don't remember the conversation at all. It is a long time ago, it is three years ago now, and it was nothing that interested me particularly at that particular time, and I don't recall the conversation.

Q. But you do remember that Mr. Cobban at that time told you that Mr. Griswold was working for him in locating these entry people?

A. I don't know that he told me that he was locating anybody.

Q. Well, you say that Mr. Cobban told you that Mr. Griswold was working for him?

A. Yes; he was working for him.

Q. And did the conversation begin and end with that bare statement?

A. I don't think it did; I don't know. He was there probably ten or fifteen minutes, but I have told you I do not know what he said.

Q. That was the first time you had ever seen him?

A. The first time; yes, sir.

(Testimony of Charles A. Jakways.)

Q. And now you swear that you do not know what he talked about and what he came to your ranch for?

A. I don't know what he came there for.

Q. Nor what he said?

A. He may have come there to meet me, I don't know; I presume he did.

Q. If he came to meet you, for what purpose did he come to meet you? A. You will have to ask him.

Q. You don't know? A. No; I don't.

Q. Now, Mr. Griswold had had several conversations with you previous to Cobban's coming to your ranch, had he not?

A. Oh, yes; I had talked to him for six or seven years before that.

Q. I mean during this season of 1899.

A. Yes; we talked about lots of things.

Q. These conversations took place at your ranch?

A. Some of them, some of them at the store, some of them in Dixon's saloon, and some of them out in the timber and various places, along the road—we rode around the country together more or less and went to Missoula together once I believe and road up from Bonner together once, I believe, and we talked all the while.

Q. That is eight or nine different places and times that you and Griswold were together and talking about this matter? A. What matter?

Q. About his business up there?

A. Oh, yes; we talked about it.

(Testimony of Charles A. Jakways.)

Q. Now, then, he told you that his business in and about Ovando was finding locations that had good timber growing on them that could be entered under the Stone and Timber Act, didn't he?

A. He might have. My connection with Mr. Griswold was more particularly with regard to small tracts and unsurveyed locations, forty and eighty acre tracts that he desired to place scrip on, and I worked with him in the timber almost entirely on that line, I was on some claims with him and helped him run the lines of them, etc.

Q. How many claims would you say that you were on with him?

A. I was on the Albert Stewart claim with him; I was on the Opsata claim with him and I was on both of the Hoyt claims, I think, one of them, anyway, and probably both, and Doney's homestead; I think that is all; that is all I can remember at present; I don't remember any others.

Q. In addition to that you were with him on small tracts that could be scripped, were you not?

A. Yes; he came and asked me to go with him, from my knowledge he thought I knew where the corners were and where there were some small tracts of timber that could be scripped, and he asked me to go with him and show them to him and I did so.

Q. Mr. Griswold was a comparative stranger in that portion of the country, was he not?

A. No, sir; Mr. Griswold had been there a great deal for the last six or seven years, anyway.

(Testimony of Charles A. Jakways.)

Q. Your knowledge by reason of your business with the ranchers was much better than his, was it not?

A. My knowledge of the small tracts, I think, was better than his, yes. He thought so, anyway.

Q. And of the ranchers and people that were living in Ovando and in the vicinity for ten miles around?

A. Yes. He thought my knowledge was better, anyway; he came and asked me to go and show them to him and tell him of anything I knew, and I did so.

Q. Tell of any you knew what?

A. Tell of any small tracts of forty or eighty acres, as they frequently are little corners left in a section of timber, that a ranchman cut out in order to get land that is farming land or meadow or something of that kind.

Q. And to get pieces that could be taken up under the Stone and Timber Act?

A. Well, not where they were unsurveyed, they could not. Some of them were surveyed and some of them could have been taken up under the Stone and Timber Act, those that were surveyed could be, and those that were unsurveyed, of course, could not.

Q. When did this work of yours with Mr. Griswold in the year 1899 commence?

A. Well, sir; I can't tell you just when it was.

Q. Now, you couldn't, but tell me as near as you can; was it March or April?

A. It might have been in May; although I am not sure, but it was sooner than June; there was some, I know, even later than that; there was some even away late in the fall.

(Testimony of Charles A. Jakways.)

I don't remember when it did begin; I couldn't give you an idea.

Q. I am talking now of when it commenced?

A. Well, I remember the first time I saw Mr. Griswold up there in connection with this business at that time, and my impression is that I met him as I was going down the road from town to my ranch, I think, or else going down the creek from my ranch toward Clearwater—I don't recall where, but I remember I met him on the road, and he stopped me and we had a conversation at that time in regard to this business in that country, and I think that is the first time.

Q. Now, at that time you say that he told you what his business was? What did he say?

A. Well, he spoke of seeing the advertisement of the notice of final proof, notice of intention to make final proof by my brother and Mrs. Faust, and spoke of representing some people that were buying timber and that wanted all the claims they could get, and would like to get those claims. He spoke about that matter, and that is all that I recall now of the conversation. He said that he represented people who wanted to buy a lot of timber; that is the way I understood him. He may have asked me if there were other claims, but I don't remember the conversation at all, I simply remember the incident.

Q. And just where did this first conversation with Mr. Griswold take place?

A. I cannot recall. I met him on the road. I think it was between Ovando and my ranch—that is my impres-

(Testimony of Charles A. Jakways.)

sion of the matter, although I am not sure. That is my best recollection of it, that I met him between Ovando and the Cottonwood country.

Q. Who were present at the time?

A. I don't remember that there was anybody but Mr. Griswold and myself; I don't remember anybody else, though there might have been, too.

Q. Were you riding in your buggy?

A. I believe I was; yes, sir; I wouldn't be sure, though, whether I was in the buggy or on horseback. I go back and forth so much that I don't remember.

Q. You don't remember anybody being present except Griswold and yourself at the time that he met you and told you what he was doing there and his business?

A. No, I don't remember anyone being present, but there may have been.

Q. Now, how long a time after that, Mr. Jakways, after this meeting was it before Mr. Cobban came to your house, the time that you have mentioned, with his wife and child and informed you that Mr. Griswold was working for him?

A. I cannot tell you; I don't know when this meeting was, and I don't remember when Mr. Cobban came. I couldn't tell you within a month for certain. It may have been a month, and it may have been two months, I couldn't tell.

Q. But you know that Mr. Cobban came after this meeting with Mr. Griswold? A. Oh, yes.

Q. But when it was you don't know?

(Testimony of Charles A. Jakways.)

A. No; I couldn't say.

Q. Now, then, in this conversation that you had with Mr. Griswold on the road didn't he at that time and place tell you that he was working for Mr. Cobban in getting entrymen and entrywomen to make locations under the Stone and Timber Act? A. No, sir.

Q. Did he not further tell you that Mr. Cobban, for whom he was working, was working for the defendant in this case, Senator Clark?

A. No, sir, he did not tell me that.

Q. And that they were going into the matter on a large scale and wanted all of good timber that they could find?

A. He mentioned the large scale all right enough, but he did not say who he represented. He did not appear to know himself, the way he talked to me, I did not think he knew himself. He spoke of the Largey estate that was after the timber, and he may have spoken about Mr. Clark wanting timber, but he certainly did not tell me who he represented and I did not know until Mr. Cobban came up there who he did represent. He used to speak of them as "these people" and "our people" and I did not know who it was. He spoke of them as somebody that had lots of money and wanted to get lots of timber.

Q. And he might have mentioned Senator Clark's name? A. He may have.

Q. But at that time you did not know Mr. Cobban?

A. No, sir.

(Testimony of Charles A. Jakways.)

Q. Nor hadn't heard of him?

A. I may have seen his advertisement in the newspaper, but I don't know that I had; I did not know the man and had never seen him.

Q. Is your memory as faulty as it appears to be in regard to this matter; some three years having elapsed, it is possible that Mr. Griswold might have spoken of this stranger and you not have remembered that fact, is it not?

A. Well, I hardly think so, I hardly think it possible because I remember the incident of Mr. Cobban coming to my house very clearly, and it fixed itself on my mind at that time that he was the man that Mr. Griswold was representing. That is the reason that I know that it was the first I knew of Mr. Cobban or anything about him.

Q. I will ask you further, Mr. Jakways, if Mr. Griswold did not further in that conversation with you on the road ask you to assist him in making these locations? A. What locations?

Q. The locations that you have already referred to in your testimony and others.

A. I haven't referred to any except my brother's and Mr. Faust's, and they were already made.

Q. Well, answer the question, please.

(Question read.)

Mr. WALSH.—There does not seem to be any question now.

A. I don't see any question.

(Testimony of Charles A. Jakways.)

Mr. MAYNARD.—Well, just read the question over again and see whether it is a question or not.

The EXAMINER.—The witness is asked in reference to a conversation with Mr. Griswold; that is what the attorney wishes him to speak about?

Mr. WALSH.—Yes, sir.

The WITNESS.—Yes, but he referred to some locations that I spoke of.

Mr. WALSH.—The witness asked the counsel what he means about these locations, and he is entitled to know that.

The WITNESS.—I can't answer the question at all the way it is.

Q. Did he not in that conversation ask you to help him in his work that he told you he was engaged in?

A. Yes, sir.

Q. And you did aid him?

A. I tried to, yes, sir, some way.

Q. How many days did you spend with Mr. Griswold in this work?

A. I could not tell you; I don't remember. It was disjointed work; it would be a day or two here and I would be back at the ranch at my work and then be out with him again some time, driving back and forth past my ranch frequently, and different times. I don't know how many days I was with him.

Q. And you don't know how many months it ranged over?

(Testimony of Charles A. Jakways.)

A. Oh, I guess six months would cover it all; I think it would.

Q. Now, Mr. Jakways, you are as busy a man in your numerous enterprises as you know of, are you not?

A. Well, I am fairly well employed most of the time.

Q. In your own business matters? A. Yes, sir.

Q. And in your official engagements?

A. Yes, sir.

Q. Why did you spend this time with Mr. Griswold in this work?

A. Well, he offered to pay me for it for one thing, and he requested it and I agreed to it; that is all the reason I know of. It was at a season of the year when I was least busy of any time, between cropping time and haying. I have more leisure then than I have at any other time except possibly in the winter time.

Q. How much was he going to pay you?

A. My recollection is that he said he would make it right with me. I don't remember that there was any specific price placed on it.

Q. The sole motive, then, which led you to give up so much of your time during that season of the year from May for the six months next thereafter was the bare statement that Mr. Griswold made that he would make it right with you?

A. No, sir, it was not. I took rather a broad view of the matter. We were in business there, and if Mr. Griswold represented somebody who was going to buy

(Testimony of Charles A. Jakways.)

timber in that country from the people who lived there and owned timber, it was a reasonable supposition on my part that there would be some money scattered in that locality. It would increase our business and our trade and make more prosperous times, and I think that was the strongest motive that actuated me in my work with Mr. Griswold.

Q. Had the times been dull up in that section of the country for some considerable length of time immediately preceding this?

A. Oh, not particularly so. It is about the same all the time there. There is no boom in that country at any time; it is generally about the same, about so much business all the while.

Q. As a matter of fact, these ranchers who were customers of your store had to be carried, did they not?

A. A good many of them, yes; they were anyway; I don't know as they had to be.

Q. How long a time had this credit extended over as a rule? A. To the ranchmen?

Q. Yes.

A. Oh, that is a pretty hard thing to answer. They have running accounts there, some of them run longer than others. It is impossible to answer that question intelligently. They are mostly small cattle men and they sell cattle once or twice a year and settle up. Sometimes the account will run a year and sometimes longer; sometimes not so long. I couldn't tell you be-

(Testimony of Charles A. Jakways.)

cause there are so many accounts and so many different accounts running in so many different ways.

Q. But these ranchers who have gone in there and taken up a piece of land under some form of Government act had to be carried from season to season, had they not?

A. Oh, yes, most of them; a good many of them. Some of them did not.

Q. You got your pay when they had anything to sell? A. Yes.

Q. Previous to this meeting with Mr. Griswold your brother had located on his claim, had he not?

A. Yes.

Q. And your partner's wife, Cora, had located on hers? A. Yes.

Q. Had they proved up on them?

A. I think not.

Q. And it was between the time of their filing and their proving up that Mr. Griswold met you?

A. I believe it was, to the best of my recollection. The reason I think so is that he spoke of seeing their notice of intention in the "Garnet News"; that is the only way I have of fixing the date of it. I don't remember the date it was or anywhere near.

Q. And these claims to your knowledge were afterwards sold to Mr. Cobban? A. Yes, sir.

Q. This 160-acre tract which your sister took up had already come to your knowledge, had it not?

A. Yes, sir.

(Testimony of Charles A. Jakways.)

Q. Previous to her coming out from her home in Illinois? A. Yes.

Q. As a matter of fact you wrote to her to come out and take it up, did you not?

A. No, sir, I told her nothing about till she got here.

Q. Now, then, did not Mr. Griswold in this meeting at the roadside tell you just exactly what he was doing and what he proposed to do and further tell you that if you would assist him and when I say I you, I mean also your partner, Mr. Faust, that there would be a good deal in it for you in different ways.

A. He certainly did not tell me what he proposed to do in the light of subsequent events, no. He may have told me some things he proposed to do. I don't remember whether he did or not, but I guess probably he did.

Q. And that as a result of that conversation at any rate, you spent the time that you did with him?

A. Yes.

Q. And one of the—

A. Other conversations afterwards led up to the matter, too.

Q. And at that time he told you, did he not, of the arrangement that he had made with Mr. Cobban by which he was to hire these men and women to make these locations and that they were to get their expenses and one hundred dollars? A. No, sir.

Q. Didn't tell you that? A. No, sir.

(Testimony of Charles A. Jakways.)

Q. And did you not at that time and place say that you would be very glad to help him for the reason that your firm had carried these ranchers for a long time, that they were indebted to your store, and if they could make a sale of their timber that you could see that they would then have means to pay you?

A. I don't remember any such conversation as that.

Q. Or words to that effect?

A. We may have spoken of the ranchers taking up claims and selling them and making money. We always like to see our people make money in any legitimate manner. If they get money, we get some of it, generally.

Q. And if they get money, your claims against them would have a chance to be satisfied, would they not?

A. Well, not necessarily on that account. If they get money they are generally more willing to trade freely, if they have got lots of capital.

Q. And paid up what they owed you?

A. If they owed anything, yes, sir.

Q. Didn't you at that time and place, say, when he called your attention to the claim that your brother had taken up and the Cora Faust claim, didn't you then tell him that he could not get those claims for one hundred dollars?

A. No, sir, I don't think I said anything of the kind. I am sure I didn't. I couldn't have; I wasn't authorized at that time in any way to have anything to do with their claims or the sale of them.

(Testimony of Charles A. Jakways.)

Q. And that you told him at that time and place, and he agreed to it, that they could not come under the arrangement, but that they could get a good price for their claims?

A. I don't remember any such conversation. He may have talked of the claims. I think I asked Mr. Griswold if he ever was up in that region where those claims were; to go over them and give me an idea as a man whose knowledge of timber was considerable, as to the amount of timber on them, and with his knowledge of its handiness to driving water, its probable value.

Q. I desire also to have included in those claims the Charley Johnson claim in connection with your brother's and your partner's wife's claim.

A. I don't remember whether Johnson's claim was taken up yet or not at that time; I could not say whether it was or not.

Q. Didn't he further tell you when he was disclosing what he was going to do up there and soliciting your assistance, that Cobban would shortly meet you and talk the matter over with you, and state what he proposed to do himself?

A. He never mentioned Mr. Cobban's name. I understood Mr. Griswold's duties at that time were looking the country over to find out whether there was any vacant timber and more particularly to look up locations for Forest Reserve lieu land scrip. That was the point that he wanted my assistance in especially

(Testimony of Charles A. Jakways.)

aside from the use of our office when he was in the store to write letters in and such courtesies as we could extend to him in a business way at our store. But I did not understand that Griswold was in any way authorized beyond the duties of a timber cruiser and an estimator of the probable amount of timber on timber land.

Q. And further did he not tell you that Cobban was representing Clark, the defendant in this case, and that they were going into it in the largest way and that the business, much of it, would pass through your hands in the shape of conveyances and the handling of money to pay for these claims, and that it would be a great financial benefit to you and your firm to help him in this matter?

A. He did not mention Mr. Cobban's name at all, and I think I recall a conversation some time about that time in which he said that he did not know who this timber was for, who was to get this timber; he did not know who was getting it. I remember his speaking of the Largey estate, and I think of the Weyerhauser people of Wisconsin, and he may have spoken of Mr. Clark, I think he did, but he left the impression with me that he did not know who the timber was for. He spoke of representing men who had plenty of money and that was all I knew about it.

Q. Now, wasn't it these representations I have stated to you, or the substance of it—I don't pretend to give the exact words—but the substance of these representations which I have now called to your attention

(Testimony of Charles A. Jakways.)

that Griswold made to you at that time when he saw you on the road, that led you to give up six months of your time in assisting him in and about this work, rather than his bare representation that he would make it right?

A. Well, I did not say that I gave up six months of my time at all and I did not either, nothing like it, and I will say that such representations as he made to me at that time were what caused me to assist him.

Q. And shortly after these representations which caused you to assist him, Mr. Cobban, a stranger, called upon you at your ranch then that Mr. Griswold was working for him in this matter?

A. Yes, sir; sometime after that.

Q. Now, then when did you next see Mr. Cobban after this meeting?

A. I can't tell you; I don't know.

Q. Can you tell where it was?

A. Oh, after the meeting at the ranch, you mean?

Q. Yes.

A. I think it was the same afternoon at our store, or the next day, I could not say; it was right away afterwards anyway, or very shortly afterwards.

Q. Was that a chance meeting or was the meeting at the store the result of the conversation which you had with him at the ranch?

A. I cannot remember whether I went up there to see him or whether I went up there on business of my own; I can't tell you now; I know I met him again at

(Testimony of Charles A. Jakways.)

the store, but I don't know that I knew that he was going to the store. He had quite an outfit with him in his wagon, and it seems to me I had the impression that he was going to camp out somewhere with his family; it was pleasant, nice weather; but I don't remember how that was.

Q. Then you saw him at the store either that afternoon or the next morning?

A. I believe so, yes, sir.

Q. Have you any present recollection as to what he said or did there? A. No, I haven't.

Q. No recollection at all. A. No.

Q. It completely fails you?

A. I don't remember anything that took place there at all. He met Mr. Faust there at the store at that time and bought some things there I believe, some few little articles.

Q. Wasn't Mr. Griswold there at the time?

A. I think he was.

Q. You know he was, don't you?

A. I could not be sure that he was in the store at the same time of Mr. Cobban's being in there and myself, but I am satisfied that he was in town. Whether he was there or over to Dixon's or the hotel or where he was I don't remember; it is quite probable he was there, but I don't know.

Q. Now, then, when Mr. Cobban and Mr. Griswold were at your store was Mr. Faust there?

A. I think he was.

(Testimony of Charles A. Jakways.)

Q. Now, then, did not Mr. Cobban at that time and place which I now fix, in the presence of yourself and Mr. Faust and Mr. Griswold, then state to you in substance this: "Mr. Griswold has stated to me that you are willing to assist him and me in the enterprise in which I am engaged. I am taking up a large number of claims under the Stone and Timber Act in the interest of the defendant in this case, Senator Clark, and he has told me that you would be willing to assist in the matter, and what I want you to understand is this, that you assist Mr. Griswold in finding proper locations with the proper amount of timber growing thereon and I will leave money now with you to help pay the expenses of making these entries, I will furnish you with money from time to time and you may advance money of your own if I should not happen to have funds here to met the necessary expenses and I will reimburse you, and if you will do this it will be a source of profit to you." And did you not then and there under the representations that Mr. Cobban made to you that afternoon or the next morning further consent to engage in the work with Mr. Griswold? A. No, sir.

Q. Well, substantially these representations?

A. Mr. Cobban spoke of wanting to buy timber land. We told him that we would extend him every courtesy that we possibly could, consistent with our business.

Q. As a matter of fact, at that time and place did not Mr. Cobban leave some money with you then?

A. I don't think he did. I don't have any knowledge

(Testimony of Charles A. Jakways.)

of it unless it was for something that he bought there. He may have bought something and paid for it in the store. He certainly gave me no money at that time.

Q. If it wasn't money didn't he leave a check?

A. He didn't give me any check.

Q. If he didn't leave it with you personally didn't he leave it with your partner, Mr. Faust?

A. I did not see it and I don't know anything about it.

Q. You have no knowledge?

A. No, sir; no knowledge of it.

Q. You were sworn as a witness in behalf as a witness for Mr. Cobban in the civil suit which was pending in the District of Missoula?

A. Yes, sir.

Q. Before a referee, were you not?

A. Yes, sir.

Q. Did you not at that time in your testimony which you gave before the referee as a witness in behalf of the defendant, admit that Mr. Cobban left money with you for that purpose?

A. No, sir; I am very sure I didn't. My evidence in that case was in connection with a matter of $20 that Mr. Griswold got from our firm at one time, and Mr. Cobban paid it back to our firm, and as I understood the matter, although I know nothing about it, I understood that Mr. Griswold claimed that Mr. Cobban had no right to pay that money over to us because as a matter of fact our firm owed Griswold, and this $20 was prop-

(Testimony of Charles A. Jakways.)

erly his money and belonged to him; that was my understanding of the matter at that time.

Q. Hasn't the objection made by Mr. Griswold that he objected because there was no order from himself on you to pay it, wasn't that the point?

A. It might have been; I don't know; I don't remember.

Q. Now, are you willing to swear, Mr. Jakways, that Mr. Cobban did not leave money at your store at that time?

A. Why, no; I can't swear to anything of the kind. He didn't give me any money, and I didn't see him give anybody else any money. He paid money into our firm at different times on different accounts, according to our books.

Q. Now, I am trying to take it in its chronological order? A. Yes, sir.

Q. You admit that he paid money in at different times?

A. I say from our books he paid money in at different times.

Q. When was the first time?

A. I don't know; I don't remember the date. I remember glancing over the books and seeing the amount there. I am not the bookkeeper, but I look over them at times so that I may have some superficial knowledge of how the accounts are running; I naturally would be interested to know that.

Q. How many different times from your knowledge

(Testimony of Charles A. Jakways.)

or recollection did Mr. Cobban pay money into your firm?

A. Well I couldn't say how many times; I don't know.

Q. Nor you don't know how large the amounts were?

A. No, I couldn't remember the amounts; there were grocery bills he had. Mr. Griswold and his brother and another man were up there at Kleinschmidt Flat looking for forest reserve lieu lands for scrip. They had a camping outfit and bought supplies, and I believe Mr. Cobban paid for some of them and some of them Griswold paid for and some of them nobody paid for yet—they are on the books yet.

Q. Are you willing to swear that no money was paid in by Mr. Cobban for purposes other than merchandise?

A. We have borrowed money from Mr. Cobban.

Q. You borrowed money from Mr. Cobban?

A. We have, yes, sir.

Q. This Mr. Cobban up to July, 1899, was a stranger both to yourself and to your partner?

A. I think it was in July the time he came up there; up to the time that he came there he was.

Q. He was a stranger to both of you?

A. He was to me, certainly. I am not speaking for my partner.

Q. And you have no knowledge of your partner having any acquaintance with him, have you?

A. No, sir.

Q. Didn't you tell me a few minutes ago that when

(Testimony of Charles A. Jakways.)

he came up there that afternoon or the next morning after being at your ranch that you introduced him to your partner?

A. I don't think that is so, and I don't think I said so.

Q. Wasn't it so?

A. I could not say whether I introduced him or whether Griswold introduced him, I don't know.

Q. Now explain to me how it was that you were borrowing money from this stranger shortly thereafter.

A. He was in the real estate business and loaning money, in the money loaning business, and advertised that he had money to loan.

Q. What security did you give Mr. Cobban that he loaned you or your firm?

A. I don't remember. Mr. Faust transacted that part of the business, the details.

Q. Do you know of any security of any kind having been given by your firm to Mr. Cobban for any loans that he extended to you?

A. I know of none. Mr. Faust may; I do not.

Q. As a partner in the business, if any security was given, would not you be liable to know?

A. A note might be given and I not know it; that happens very often.

Q. Do you know of any note having been given?

A. I don't know of any note.

Q. You don't know of any mortgages having been given?

(Testimony of Charles A. Jakways.)

A. I am quite sure there were no mortgages; I would have known of them.

Q. Do you know how much these loans amounted to?

A. No, I don't.

Q. You have no knowledge of them?

A. I couldn't tell you no unless, I had the books here. Mr. Faust will give you all that information when he comes here. He has got the books and I presume he is willing to swear to them. He is the bookkeeper of the firm. Those detail matters I did not have anything whatever to do with.

Q. Such a detail as your borrowing money in sums that you did not know from a stranger does not interest you to the extent that you have any knowledge of it now?

A. I leave those matters entirely to Mr. Faust.

Q. You are unable to state when the loans were made? A. Yes, sir.

Q. Or for what purpose?

A. Well, for what purpose—if we needed the money, we would borrow it.

Q. You say you did borrow the money?

A. Yes.

Q. Therefore you needed it? A. Yes.

Q. What did you need it for?

A. We needed it in the course of our business, needed it for the purpose of conducting our business. I do not care to go into any details of our financial standing as far as that is concerned unless it is necessary;

(Testimony of Charles A. Jakways.)

the fact of the matter is, what we needed money for when we borrowed it from him or from other people, as we have on numerous occasions, I don't think it is any of your business.

Q. So that on numerous occasions before this you have borrowed money to carry on your business?

A. Before that and since.

Q. Do you know whether those loans have ever been paid back again? A. To Mr. Cobban?

Q. Yes. A. I think they have.

Q. When were they paid back?

A. I don't remember. We probably carried three hundred accounts on our books, and payments are made every day and payments come in every day and we draw all the way from three to five thousand dollars' worth of checks every month, and I am not supposed to remember them all when I don't draw them myself.

Q. Give me the facts upon which you based your opinion that these amounts had been paid back to Mr. Cobban?

A. Well, I talked with Mr. Faust at inventory time, and always do, and look over our personal accounts before the balance sheet is drawn, and my recollection of the matter is that Mr. Cobban's name did not appear at all in the bills payable or in the personal accounts due us or personal accounts we owed; I think our accounts balanced.

Q. But you say that you did not know and do not know now how much you ever borrowed from Mr. Cobban nor for what purpose you borrowed it?

(Testimony of Charles A. Jakways.)

A. I cannot remember how much we borrowed.

Q. Nor for what purpose?

A. I told you the purpose. It was for use in our business.

Q. Was the business use the use of the money in buying up these claims?

A. We did not buy any claims.

Q. In advancing this money to entrymen and entrywomen?

A. We loaned the money to entrymen and entrywomen at various times; that was part of our business. We loaned money to entrymen and entrywomen a number of times. If we borrowed money from Mr. Cobban it would be placed in our bank and we would check on it for whatever purposes we desired to use it; it was mixed up with our money then, and it was our money after we borrowed it. The entrymen and entrywomen may have got some of the same money after the check went around through the routine, and got back through the bank—I don't know anything about that; some of it possibly paid for groceries and patent medicines and prunes, etc.

Q. Now, isn't it true that some of this money was let by Mr. Cobban and given to you from time to time by reason of the arrangement and agreement that he made with you at the store in the presence of Mr. Faust and Mr. Griswold, that he should do so?

A. I have told you that he did not make any such arrangement to my knowledge.

(Testimony of Charles A. Jakways.)

Q. Now, then, this money was used to defray the expenses of the men and women who did afterwards make entries under the Stone and Timber Act?

Mr. BICKFORD.—We object to this as having already been answered by the witness two or three times.

The WITNESS.—I can answer it again; I had just as soon tell him that again.

Mr. BICKFORD.—This is a mere repetition of the question that has heretofore been propounded by counsel and a needless repetition.

The WITNESS.—The money was sent to the bank and deposited in the bank with other money.

Q. What bank?

A. The Western Montana National Bank of Missoula, Montana.

Q. That is, the money that you got from Cobban you sent to the Western National Bank at Missoula?

A. Mr. Faust attends to our business; that is where all of our money goes. We deposit it as fast as we get a little sum on hand; it goes to the bank, and we check it out. All our money is deposited there. When I say that our money went to the bank, I have no personal knowledge that it did go to the bank, but I am satisfied that it did, because we remit twice a week or oftener, according to the money we have on hand, to the bank, and transact almost our entire business by check.

Q. Now, then, tell me, Mr. Jakways, if this arrangement had not been made with Mr. Cobban that this

(Testimony of Charles A. Jakways.)

money of his was to be used by you for the purpose I have indicated, why was it that you borrowed this money from him and deposited it in the bank at Missoula, for the purpose of loaning it to these men that afterwards made entries?

Mr. BICKFORD.—The same objection as above.

Q. Now, why did you do that?

Mr. BICKFORD.—And for the additional reason that the question itself is misleading, and states a fact that is not shown by the evidence of the witness.

A. In the first place, I have not told you that there was any arrangement.

Q. I said if this arrangement was not made?

A. You want to know again what we borrowed this money for; that is what you want to know? Read the question.

Q. (Question read.)

A. I never told you that we borrowed it for that purpose.

Q. Well, we will see whether you did or not?

A. Well, I can tell you again.

Q. Can you answer the question?

Mr. BICKFORD.—We submit that the question has been answered.

The EXAMINER.—No, it has not been answered; let him answer it.

Mr. BICKFORD.—Then we ask that the question be divided by the counsel on the other side?

(Testimony of Charles A. Jakways.)

Mr. WALSH.—He can answer it, cutting out that feature of the question altogether.

The WITNESS.—Well, I will have to tell you that we borrowed the money for use in our business, just the same as I did before; that is the truth.

Q. Did you not answer me before, some little while ago, that some of this money was used for the purpose of enabling men to make entries under the Stone and Timber Act?

A. No, sir; that is not so.

Q. Didn't you advance money to them?

A. We loaned them money.

Q. You loaned them money? A. Yes, sir.

Q. To how many persons did you loan money?

A. I couldn't tell you how many.

Q. Have you no knowledge?

A. I never loaned any money to anybody myself. The routine of business in that matter was all done by Mr. Faust.

Q. So then when you say we loaned them the money, you mean that Mr. Faust loaned them?

A. Well, I go by what I see on the books, that is all, that they borrowed money, and Mr. Faust told me that they borrowed money, and I have no reason to doubt his word. That is what my knowledge is based on; I did not loan that money myself.

Q. Didn't Mr. Faust tell you how mony he had made such loans to?

(Testimony of Charles A. Jakways.)

A. I don't remember that he did. He mentioned the names of several that we had made a loan to; I think he asked me about a loan to one or two persons, what I thought of it.

Q. You know that he loaned money to Elijah W. Hoyt, and Charlotte S. Hoyt, his wife, do you not?

A. No, I don't; I don't know that he did; I think he did though.

Q. You know that he loaned money to Mr. Doney, and Martha M. J. Doney, his wife?

A. I believe he did; I don't know anything about the details.

Q. You know that he loaned money to Nels Opsata?

A. I told him to.

Q. You know he loaned money to Alfred Stewart, do you not? A. I told him to.

Q. You know that he loans money to three or four of the Muchmore brothers, and their aunt Elizabeth S. Muchmore, do you not?

A. I don't know anything about those cases, but I believe he did. In his place I would, I know.

Q. Now, then, you further know of other loans made to persons that I have not named?

A. Oh, yes. Lots of men come in there and borrow money.

Q. I mean for the purpose of making entries under the Stone and Timber Act?

A. It may be; I don't recall any other now, none that I know of.

(Testimony of Charles A. Jakways.)

Q. Do you know of a single one of these men to whom this money was loaned that I have named, giving your firm any paper of any kind in the shape of a note or mortgage?

A. I think that some of them gave us a note, and some of them I know didn't; I don't know which ones, or I am not positive that any did, but I think there were one or two of them that gave us notes. In fact, I think that I saw a note of Doctor Hoyt, and I may have seen another, but that is the only one that I recall ever having seen.

Q. That was Dr. Hoyt?

A. Yes, I think I saw a note that Mr. Faust took from him for the money loaned at that time. I would not be sure of that; it seems to me that I was in there one day and saw the note in the safe.

Q. And that is the only note that you know anything about having been obtained by your firm?

A. That is the only one I recall now. I may have seen others at the time; we have got lots of notes there.

Q. You know of no mortgage having been executed by these parties?

A. I don't think there was any.

Q. You know that there was not, don't you?

A. No, I don't know that there was not; but I don't think there was any; I never heard of any, and never saw any.

Q. And you never heard of any note having been

(Testimony of Charles A. Jakways.)

given by anybody with the possible exception that you may have seen a note made by Dr. Hoyt?

A. Yes, and I may have seen another one or two; I cannot be sure. There are many transactions going on that I can't recall them all three years later.

Q. Now, explain to me how your firm that, as you say, was constantly borrowing money—

A. Oh, not constantly.

Q. —should make loans to those people that I have mentioned without taking any security whatever?

A. Well, I didn't say that we were constantly making loans in the first place, and, in the second place, I did not say that we were borrowing money to loan to these entrymen and entrywomen, and what is the rest of the question?

Mr. WALSH.—He wants you to explain why you did not take any security?

The WITNESS.—I did not think that was necessary. There are hundreds of loans just like that; I can show them on the books, lots of them, before that time and since, years before and years since.

Q. Did you have anything to do with the Opsata and Stewart loan?

A. I told Mr. Faust to loan them that money if they wanted it.

Q. How much was the loan to be?

A. I don't remember—whatever they needed to pay for their claims with—probably about $500—$450 or $500—I don't know the amount now. It didn't make

(Testimony of Charles A. Jakways.)

any difference as far as that is concerned; if Opsata came in the room here and asked me for $1000 now, I would give it to him if I had to go and borrow it.

Q. If, as a matter of fact, the Opsata and Stewart loan was eight hundred dollars and upwards, how can you account for your firm loaning that amount of money without taking any security or even without a note?

A. How can I account for it?

Q. Yes.

A. I don't need to account for it; it is a fact.

Q. Why did you do it?

A. Because we wanted to do it.

Q. Because you wanted to?

A. Yes, they asked us to do it, and we did it.

Q. Now, didn't you make that loan to them for the simple reason that it was Mr. Cobban's money, and he had left it there for that specific purpose?

A. No, sir; not at all.

Q. Isn't it true that each and every one of these loans were made to these men because of the fact that it was Cobban's money and that you were engaged to do it solely in his interest?

A. No, sir; that is not so; it is not so at all.

Q. And that the only reason that you gave it to them was because you had entered into a specific agreement with these people that they would immediately after they had obtained a duplicate receiver's final re-

(Testimony of Charles A. Jakways.)

ceipt convey the land that they had entered to Mr. Cobban? A. No.

Q. You swear to that?

A. There was no such agreement in any instance between me and any entryman.

Q. Will you swear that no such agreement existed?

A. No such agreement existed between me and any entryman.

Q. Will you swear that no such agreement existed between these entrymen and your firm?

A. I never knew of any. My knowledge of the matter is all that I can swear to. You will have to ask Mr. Faust what he knows when he comes here. I know of none, and he never told me of any such agreement or any agreement whatever to transfer their claim to anybody.

Q. You didn't know that any such thing was going on?

A. Not to my knowledge.

Q. You didn't know that such a thing was going on?

A. Not to my knowledge.

Q. And you were loaning this money to these people without security because you wanted to?

A. Those whom we considered good we were, if we liked the looks of them, and knew their record.

Q. All right, Mr. Jakways, if that is—

A. But I wouldn't do that with everybody; you need not think that for a minute.

Q. Now, then, in your capacity as a representative

(Testimony of Charles A. Jakways.)

of the Government, you had gotten onto a very nice piece of 160 acres previous to your sending for your sister at Lincoln, Illinois, had you not?

A. In my capacity as representative of the Government?

Q. Yes.

A. Well, I did not know that the Government gave the United States Commissioner any special rights to land more than any other citizen; they certainly never did me.

Q. You say you first became interested in Government lands, that is, to any extent, after your appointment as Commissioner?

A. Well, that is the first time that I had any particular knowledge of the land laws, and I was more or less interested of course; homestead filings coming in, and proofs, desert proofs and desert filings and so on; that is where I first became acquainted with the land laws to any extent.

Q. You knew of this tract that your sister took up?

A. Of course, I knew of it; I knew all about it.

Q. How long after she arrived at Ovando was it, that you say was about the 16th of June, before she filed on it?

A. Well, I couldn't tell you now; I don't remember how long after it was. I could tell you the exact date if I could get hold of certain data, because I can fix it by another date that is a matter of record. She filed on her timber and stone entry on the same day or the day

(Testimony of Charles A. Jakways.)

before or the day after that Mrs. Faust and my brother made final proof on their claim; that is my recollection of the matter. I don't just remember when it was, but probably it was about the middle of June or thereabouts or shortly after the middle of June, because they filed the 15th of April. The advertisement would bring it with the date.

Q. If your sister arrived in Ovando about the 16th of June, and she filed on the land about the middle of June, the arrival and the filing was simultaneous, weren't they?

A. Well, she stayed at my place three or four days or four or five days, or possibly a week, and rested up before she went and filed.

Q. And she filed on it solely because of your suggestion that it would be a good thing for her to do so, did she not?

A. I told her I thought it was a good investment.

Q. As a matter of fact you testified yesterday that she did not know a thing about it?

A. Not a thing in the world.

Q. About Government business, or filing upon Government land?

A. No, sir; I don't think she did know anything about it in the world.

Q. You knew at the time when you said that you thought it would be a good thing for her to file on this 160 acres of land that it would cost between four and five hundred dollars? A. Yes, sir; I did.

(Testimony of Charles A. Jakways.)

Q. To pay for the land and to pay for expenses?

A. Yes, sir.

Q. You knew as a matter of fact that your sister at that time did not have any money to pay for it?

A. I did not say so.

Q. I ask you now?

A. I don't know how much money she had or anything about it.

Q. Did you know at the time that you explained this scheme to her that she had any money?

A. I did not know that she had any or that she did not have any; I did not know her circumstances.

Q. Did you know at that time of her having any estate, real or personal, of her own?

A. I did not, no, further than her husband's income; that was all I knew about.

Q. He was a station master at Illinois, wasn't he?

A. Yes, sir, and has been for some fifteen or sixteen years.

Q. Now, who went with your sister out to this location? A. When she filed?

Q. Yes.

A. Mrs. Faust, my brother, L. S. Jakways and myself.

Q. When you came here to Helena?

A. Yes, sir, came to Helena.

Q. Who went with her to see this tract that you had selected for her? A. I did.

Q. You two went together? A. Yes, sir.

(Testimony of Charles A. Jakways.)

Q. Anybody else with you besides your sister and yourself?

A. Yes, there was, but I don't know who it was now. Let's see—there was somebody else along. It rather strikes me it was my brother, but I cannot be sure, but there was either one or two other people with us when we went up there, but I cannot swear who it was now. I am quite sure there was somebody else.

Q. Who paid your sister's expenses over here to Helena? A. When she went to file.

Q. When you came over here to file?

A. Well, over here—this is Butte.

Q. Well, I beg your pardon; I mean Helena. I have been in Helena so much that I forget. I mean when you went to Helena?

A. Well, I took my team and drove to Drummond, and that didn't cost her anything. I believe I bought her dinner myself down at Helmville. I don't remember whether I bought her ticket to Helena and return or not, but I presume likely I did. I would be very apt to do that, or any place else that she wanted to go, at that time.

Q. Who paid the filing fee?

A. She did. There were no filing fees that I remember except the ten dollars, I believe, for advertisement. That is all I remember of. There may have been others, but I don't know. She did her own paying and filing in that case. I don't remember what was paid. I am

(Testimony of Charles A. Jakways.)

not sure that I was in the land office at the time; I was in there shortly before, and I was there right afterwards, if I recollect, but at the time I wasn't in there; I think I was over at the Collins Land Company's office, right opposite the land office, talking with Mr. Collins.

Mr. BICKFORD.—I would like to ask counsel at this time to permit me to read from the circular of the general land office with reference to the matters inquired about of the witness. It would be to his advantage, as well as to the advantage of the Court and all concerned.

Mr. MAYNARD.—I know, but those general directions have been revoked since.

Mr. BICKFORD.—I will read it with the consent of the Court.

The EXAMINER.—And with the consent of counsel.

Mr. MAYNARD.—I don't consent at all, because I know very well what my friend refers to, and I know it is revoked.

Mr. WALSH.—It was in force in 1899.

Mr. BICKFORD.—I desire to state and to put into the record at this time that I asked permission to read, and asked the consent of counsel that I may read from the circular at the general land office, showing the manner of proceeding to obtain public land under the homestead, desert land and other laws, issued July 11, 1899, and which were in force at the time when the application spoken of was made?

(Testimony of Charles A. Jakways.)

The EXAMINER.—Objection being made by counsel, you will proceed with the cross-examination of the witness.

Q. Who attended to the publication of the notice in the "Granite Mining News"?

A. I don't know; I presume that Mr. Greene, the register.

Mr. BICKFORD.—At this time we interpose an objection to the question and move to strike the answer out because it is the duty of the register and receiver of the land office at the time mentioned by counsel to attend to the publication of the notice and to pay for the same out of the deposit made by the entryman at the time when the entry was made.

Q. Do you know of any deposit having been made?

A. I did not see it, no, I don't.

Q. Do you know who paid for the publication in the "Granite Mining News"?

A. I did not see the payment made, but I presume my sister did; in other cases it was customary.

Q. You don't know anything about it, do you?

A. No, I did not see it.

Q. Who furnished her witnesses?

A. They furnished themselves. Mr. Griswold and Mr. L. S. Jakways, I believe, were her witnesses?

Q. Who were your sister's witnesses?

A. I understood Mr. Griswold and Mr. L. S. Jakways were her witnesses. I was not there when she proved up.

(Testimony of Charles A. Jakways.)

Q. Who were the four named in the advertisement?

A. I could not say who the other two were at this time; I may have been one and probably was; I could not say.

Q. Had you seen Mr. Griswold in connection with the May Hawthorne claim before this?

A. I believe I had; I asked him if he would act as a witness, I think.

Q. Why did you see him?

A. Well, he had a great deal of business in Helena and was witness in a great many cases, and I always made a point in those cases where they came before me to save the entrymen expense where I could, and combine witnesses in proof, I sometimes do that, to let witnesses act for one another. Mr. Griswold was over there a great deal, and I don't know why I asked him to do it. He was one of the witnesses and I knew he had seen the tract in question or I thought he had; he said he had anyway.

Q. Don't you know that the reason that you asked Griswold to be a witness for your sister and that he was a witness for your sister and went to Helena for that purpose was because of the agreement which you had made with him to that effect, and with the understanding that the claim was to be immediately conveyed to Mr. Cobban as soon as your sister could return to Lincoln and get her husband's signature; don't you know that that was the reason that he was a witness?

A. No, sir; I don't see what difference that would

(Testimony of Charles A. Jakways.)

make; his being a witness and the transfer of her claim to Mr. Cobban are two separate things altogether.

Q. Is that the best answer you can give to the question?

A. Well, that is not a fact; that is not so; that is not the reason I asked him to be a witness.

Q. After the expiration of sixty days, when the land was paid for, who went with your sister to Helena?

A. You mean at the time when she proved up?

Q. Yes.

A. My father and my brother, I believe, left Ovando together, although I don't know. I went home the night before and did not see them in the morning when they left. I bid them good bye at Ovando the night before they left at that time.

Q. Previous to your sister's leaving your home for Helena for the purpose of proving up, had you drawn up a deed for her?

A. Yes, sir; I think I drew it up; I could not be sure, but that is my impression about it.

Q. I show you Complainant's Exhibit No. 136. I ask you if you remember drawing a paper of which that is a copy?

A. It is not a copy of the paper which I drew.

Q. In what respect is it not?

A. It does not describe my sister's claim.

Q. You mean that the description is at fault?

A. It does not describe her claim; I don't know

(Testimony of Charles A. Jakways.)

whether it is at fault or not; I don't know anything about this paper.

Q. What defect do you notice?

A. This paper states "Real property situated in Deer Lodge County, State of Montana, described as follows: Lots No. 1 and 2 and the south half of the northwest quarter of section 4, township 15 north, range 12 west, principal meridian of Montana." My recollection of the matter is that her claim was in the southeast quarter of that same section.

Q. In fact, then, it was the southeast quarter rather than what?

A. Well, this describes some lots, I don't know what they are.

The EXAMINER.—Here is a copy of the patent.

A. In the northwest quarter, to the best of my recollection that was Bert Muchmore's claim; I heard it was; I don't know anything about his claim but I heard he had taken a claim in that section.

Q. Now, just look at the description in the patent, please?

A. That looks better. Those lots numbered 1 and 2 are probably what would be, if they were not fractional, the north half of that same quarter, the northeast quarter; that is probably the correct description. I don't remember it now. That is my impression. The northwest quarter here she has no claim in that.

Q. Now, then, with the exception of the clerical mis-

(Testimony of Charles A. Jakways.)

takes that you have pointed out, do you remember of drawing up a deed of which this is a copy?

A. I remember drawing up the deed. I don't remember now the exact verbiage of the deed, but it was in the ordinary form of a warranty deed.

Q. And that it was in substance, what you drew up at Ovando before she came here to prove up, was that your sister, May Hawthorne, and her husband Orrin E. Hawthorne, of Lincoln, Logan County, Illinois, conveyed to R. M. Cobban of Missoula for the sum of $1,500, the land which she had taken up or was about to take up or about to buy?

A. That was something like the substance of the deed, I presume.

Q. Was about to buy from the Government?

A. Yes, sir.

Q. Now, then, how was it, Mr. Jakways, if a prior agreement had not been fully entered into between you as the representative of Mr. Cobban—

A. There was not.

Q. You wait until I get a question—between you, a representative of Mr. Cobban on the one hand and your sister on the other, that she was to immediately convey this land to him—why was it that before she left your home to go to Helena to prove up on the claim that you drew this deed up for her?

A. Well, I never was the representative of Mr. Cobban at any time. When my sister was about to leave for home, I told her that Cobban had bought Lutz's

(Testimony of Charles A. Jakways.)

claim—that is my brother, L. S. Jakways—and Mr. Faust's claim, and had paid or agreed to pay—I had forgotten whether the transfer had been fully consummated at that time or not—that he had paid or agreed to pay $1,500 for each of them, and I said "Sister, I believe your claim is just as good as theirs is, and just as handy to the driving stream. Now, you are going home and I won't see you again. When you talk with your husband, if you decide to sell this claim, I will make out a deed in blank to Mr. Cobban, and you can sign it and acknowledge it before a notary public and return it to me. I will see Mr. Cobban or correspond with him in reference to the matter, and if he wishes to give the same for your claim that he has for Mrs. Faust's and Lutz's claim, I will make the sale for you, otherwise I will destroy the deed." That is the fact in reference to that deed.

Q. Where did you sister get the purchase price?

A. The purchase price of the timber, you mean?

Q. Of the 160 acres, yes.

A. Why, our firm loaned it to her, Jakways and Faust.

Q. What did she give by way of security?

A. Nothing at all. I may have loaned it to her personally—I don't just remember. When I paid our firm, I don't remember about that. It may have been drawn from my personal account, I am not sure. If it was, it was drawn from the firm's account for we have no separate account; it would be drawn and charged to me in-

(Testimony of Charles A. Jakways.)

stead of to the firm account and that would be all the difference.

Q. You gave her the $400 that was required?

A. Yes, sir.

Q. And the other money that was needed?

A. I don't think I gave her any expense money. She had passes—she didn't pay any railroad fare, and I took her out to the railroad. I guess my brother probably paid her hotel bill and so on, and my father also. My father was along with her, a feeble old man. I took care of them both.

Q. You did not pay her railroad fare because she had passes? A. She had passes.

Q. And the little thing of giving her a dinner, you could stand that?

A. Well, would't you buy your sister's dinner?

Q. Yes, I would.

A. I should hope so. I doubt it, though.

Q. You say you don't know who paid for the publication in the "Garnet Mining News"?

A. I am not sure, no; I cannot remember about that.

Q. You don't know who paid the fee at the land office?

A. I don't know that there was any.

Q. Don't you know that there were fees required of every entryman to be paid at the land office there at the time of the filing or at the time of final receipt?

A. I don't remember, there may have been fees; if there were she paid them; I didn't, I know.

(Testimony of Charles A. Jakways.)

Q. You don't know anything about whether she did or not?

A. No, I did not see her pay them; I wasn't there at all.

Q. Now, not knowing anything about it, you swear that she did?

A. I supposed she did; I don't swear that she did.

Q. And you loaned her this $400 to pay for the land?

A. Yes, sir.

Q. Taking no security whatever from her?

A. None whatever.

Q. No notes? A. No.

Q. And no understanding as to when it was to be paid back? A. I don't think there was.

Recess till 2 P. M.

Thursday, April 17th, 1902, Two o'clock P. M.

Hearing resumed pursuant to adjournment.

CHARLES A. JAKWAYS, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Who did you say gave your sister the money to pay for the land, Mr. Jakways?

A. She borrowed it either from the firm or from my private account, I cannot tell you which.

Q. Did she take it with her when she went to Helena?

A. I believe she did; I wasn't there when she started. She went away in the morning and I went

(Testimony of Charles A. Jakways.)

away in the evening, the previous evening, went home.

Q. You didn't give it to her, then?

A. I don't think I did; not to the best of my recollection, I did not. The best recollection I have of it, I told her to get the money at the store from Mr. Faust. I cannot remember the exact feature of the transaction. I know I told her she could get the money, if she wanted it.

Q. This deed that you prepared was returned by her executed, after she reached home, was it?

A. Yes, sir.

Q. Was it sent to you personally?

A. I believe it was.

Q. What did you do with it, Mr. Jakways?

A. Put it in the safe, I guess.

Q. Did you afterwards deliver it to Mr. Cobban?

A. I am not sure whether it was delivered to Mr. Cobban personally, or to his attorney.

Q. Or what?

A. Or to an attorney; there was an attorney up there closing up some transaction in the matter of the sale of this claim, but whether my sister's was taken up by correspondence with Mr. Cobban or not I wouldn't be sure. I wouldn't be sure whether this deed was mailed to him, or whether this attorney, Smith, I believe that was his name, took it.

Q. Wallace P. Smith, do you mean?

A. I don't know that, but I think that is his name. His name was Smith, but I don't know what his first

(Testimony of Charles A. Jakways.)

name was. I don't know whether he got the deed when he was up there, or whether I sent it some other way or not. Mr. Cobban finally got the deed, I believe.

Q. You think Mr. Cobban finally got the deed?

A. Yes, that is my understanding.

Q. What is that?

A. That is my understanding that Mr. Cobban got the deed eventually about that time.

Q. But when he got the deed and to whom it was delivered, and by whom, you do not know?

A. No, I couldn't say as to that. I usually left those matters with Mr. Faust. I would carry on this business, or any business matter to a certain point, and then leave it to Mr. Faust to finish up.

Q. How much did your sister get for her land?

A. She got fifteen hundred dollars, the consideration named in the deed was correct.

Q. What is that?

A. I say the consideration named in the deed was correct.

Q. She received that from Mr. Cobban?

A. Yes, from Mr. Cobban, the property was sold to him.

Q. How much money did you send to her?

A. I cannot remember exactly the amount; the money that was loaned her was taken out of it, and some expense money, and some other items; some private matters were included in it. She got the residue,

(Testimony of Charles A. Jakways.)

whatever it was; I couldn't tell you now exactly what it was.

Q. What?

A. I couldn't tell you the exact amount.

Q. Did you send it to her?

A. I believe I did.

Q. In what form?

A. I think I sent her a check for it.

Q. Did you send her a firm check?

A. Yes, a firm check; we have no private bank account.

Q. You don't know how much that check was?

A. No, I couldn't say at this time. The transaction is one that took place quite a long time ago, and I don't recall the exact amount, I couldn't tell you.

Q. Have you no recollection about it at all?

A. I wouldn't pretend to fix the amount, wouldn't want to give it unless I could give it correctly, and I couldn't do that.

Q. You couldn't give it correctly?

A. No, sir, and there is no use speculating on it, because I don't remember. I remember the transaction taking place, and of its being closed up.

Q. But you have now no recollection as to the amount you sent your sister for her land?

A. No, sir, I don't remember how much it was.

Q. But you have the check yet, have you not?

A. I presume it is among our records, I don't know; it is undoubtedly there. I don't know that I have seen

(Testimony of Charles A. Jakways.)

the cancelled voucher, but the voucher is undoubtedly there.

Q. You keep your vouchers, don't you?

A. Yes, sir, usually keep them two years, and sometimes longer, I think.

Q. Then what do you do with them?

A. We frequently have a cleaning-up, a straightening up in the garret and then we throw all the old records into a bonfire, that do not seem to be of any further use. When they seem to be of a character that we do not need to use any more, we destroy them.

Q. You make a bonfire of your returned checks?

A. I didn't say so. After they have gotten pretty old we destroy them.

Q. Two years after they are returned?

A. No, I wouldn't specify two years. I know that we have spoken of two years as generally being sufficiently long to keep records of that nature.

Q. Would you have any receipt for the payment of the money, after you had destroyed your check?

A. I may have a letter from my sister.

Q. No, no, I am not speaking particularly of that, I am speaking generally in your business matters.

A. Well, usually we would, yes.

Q. What would the receipt be if the check were destroyed?

A. It would be in the form of a receipt, in the form that we pay our bills, or whoever we pay our money to, we usually get a receipt from them for the money, from

(Testimony of Charles A. Jakways.)

people that we do business with, and pay them money, we usually require it.

Q. Then you keep your receipt and destroy your check?

A. I don't say that we have any system of destroying our checks at all; no, we have no specified time to destroy our checks. We simply make a clean up of the old records, when we go to cleaning-up. We have destroyed even our checks, and in a business in two or three years' time, there gets a whole lot of old letters and things, and they pile up pretty fast.

Q. I am not asking you about old letters, I am asking you about checks that have been paid and returned to the bank.

A. Well, when they are ten years old, they are getting pretty old and useless.

Q. I am not talking about things that are ten years old.

A. I didn't say that our check was destroyed. The check that you refer to, I don't think it is destroyed, and if I can find it you are certainly welcome to it.

By Mr. MAYNARD.—The gentlemen on the other side have promised to produce all the papers and checks.

By Mr. WALSH.—You haven't asked us for any checks.

By Mr. MAYNARD.—Well, I will ask for them now. I understood you to say that you had promised to get

(Testimony of Charles A. Jakways.)

them. I understood that you were going to bring all the checks and papers connected with this affair here.

By Mr. WALSH.—You challenged us to produce the books, and we said that we would gratify you.

By Mr. MAYNARD.—Very well, then, if there is any misunderstanding in regard to the matter, I desire, Mr. Stenographer, that you take down this: Counsel for the Government has, by mistake, evidently relied upon the gentlemen representing the defendant in this case, to produce at this hearing the original books of account kept by Jakways & Faust, showing their dealings between themselves and Mr. Cobban, and the various entrymen and entrywomen, and all other papers, including checks, receipts and statements which they have in their possession and under their control, and now I demand the production of such papers for my inspection and use upon the cross-examination of Mr. Faust and Mr. Jakways, and such other persons as may be sworn by the defendant, and who may give testimony relative to the transaction in which these papers are involved.

By Mr. WALSH.—Counsel for the defendant desires to say that they never made any such promise; that they never made any promise concerning any books, or records or checks of Jakways & Faust, except, that during the course of the investigation and the examination of the witnesses for the defendant since the defendant commenced the submission of testimony on his behalf, counsel for defendant stated that when Mr. Faust ap-

(Testimony of Charles A. Jakways.)

peared upon the witness-stand, as he would, he would bring with him the books of Jakways & Faust, and that they would be here. And as to the other matters, counsel for the defendant do not feel called upon to anticipate what checks and papers counsel for the Government may want for the purpose of cross-examination, and most respectfully refer him to such other recourse as he may have for the purpose of producing them.

By Mr. MAYNARD.—I call upon counsel now to produce this check that the witness refers to, which he said he gave his sister, or the stub of his check-book kept at the time, and from which the check was taken.

By Mr. WALSH.—Counsel for the defendant further desire to state in this connection, that they requested of counsel for the Government, that the counsel for the defendant be permitted to inspect certain books, papers, records and documents in the possession of the Government, and requested counsel for the Government to permit an inspection of the same, which request was respectfully declined; and having applied to the Court to produce them, counsel for the Government still refuses to produce them, and consequently, under the circumstances, we do not feel under any obligation to produce the papers referred to by counsel for the Government.

By Mr. MAYNARD.—I will say, in answer to that, that the appeal having been made to the Court, and objection being made thereto by counsel for the Govern-

(Testimony of Charles A. Jakways.)

ment, the Court sustained such objection of counsel, because there was no legal foundation or authority that could be invoked to sustain the attempt that was made by counsel for the defendant.

Q. I wish you would try and give us your recollection in regard to the amount of money that you sent to your sister?

A. Well, I would be only too glad to give you the exact amount if I could, Mr. Maynard, but I cannot, because I do not remember; the transaction was closed up at that time, and I have had no opportunity since to refresh my recollection in the matter, and I do not know what the amount was.

Q. Well, you said that the consideration price was correctly named in the deed, and that it was fifteen hundred dollars?

A. The consideration from Mr. Cobban, that is right.

Q. And the expenses were about five hundred dollars?

A. The expense of proving and purchasing from the Government, do you mean?

Q. Yes, sir. A. Something like that.

Q. Now, there was a margin of a thousand dollars?

A. Yes, sir.

Q. Now, can you say whether you sent your sister five hundred dollars or not?

A. I don't think I did.

Q. Well, do you think you sent her four hundred?

(Testimony of Charles A. Jakways.)

A. I don't know, it might have been that much, I wouldn't say.

Q. You wouldn't say that it was four hundred dollars that you sent her?

A. No, I wouldn't say that it was four hundred dollars.

Q. Well, will you say that it was more than a hundred dollars?

A. Yes, I will do that, all right.

Q. Well, was it more than two hundred dollars, would you say? A. I think it was.

Q. Are you prepared to say it was more than two hundred dollars?

A. Well, I will swear positively that it was two hundred dollars at least.

Q. And that is the limit. You are not willing to swear positively that it was more than two hundred dollars?

A. I wouldn't swear positively that it was more, but I would swear positively that it was no less than two hundred dollars; that is the best I could do.

Q. Now, your father, he is a minister, isn't he?

A. He was at one time, but he is superannuated now.

Q. He is a Methodist minister? A. Yes, sir.

Q. And for many years he preached the Gospel as a Methodist minister? A. Yes, sir.

Q. How old a man is he now, Mr. Jakways?

A. He is eighty-four.

Q. Eighty-four years old?

(Testimony of Charles A. Jakways.)

A. Yes, sir; he was eighty-four his last birthday, which was the 21st of March, I believe.

Q. Now, Mr. Jakways, didn't you propose to your old father, when he was out there, with your sister, to have him take up a claim, and didn't he refuse because he said to you that he could not consistently do it?

A. No, sir. I never had a conversation with my father in regard to his taking up a timber claim at all; I am quite sure I did not.

Q. You are sure you did not?

A. I know positively that I never said anything of that kind to him, because the old gentleman knew nothing about land matters at all. I am quite sure that he never knew what the requirements were for taking up a claim under the Stone and Timber Act. He was a poor, weak old man, about ready to die, and it was a matter that he knew nothing about.

Q. Well, he knew just as much about it, and had just as much knowledge of the requirements of taking up a timber and stone claim as your sister had, because you said she didn't know anything about it?

A. Well, she didn't know anything about it when she came out here.

Q. But you read the law to her, didn't you?

A. I read her the law, yes.

Q. Well, did you read the law to your father?

A. No, sir; I did not.

Q. But it is a fact that he did not take up a claim, is it?

A. Yes, sir; that is a fact.

(Testimony of Charles A. Jakways.)

Q. Well, now, which of these men that you have referred to, these entrymen, did you personally loan money to? A. None of them.

Q. What is that? A. None of them whatever.

Q. That was all done by your partner, Mr. Faust, was it?

A. Yes, sir; I never transacted any of that business.

Q. But you directed or advised him to make the loan to several of them, didn't you?

A. I advised him to loan to Nels O. Opsata, and also to Alfred Stewart; I believe that is the extent of it. I don't remember of any others. If he paid out any money and transacted any business with them, he might have spoken to me about it, and asked me if it was advisable, but I don't recall it now. I do recall the loans of Nels Opsata and Stewart.

Q. You had made an investigation of their claims before doing so, had you not?

A. Yes, sir; I had seen both claims a great many times before Mr. Griswold or Mr. Cobban or any of them ever came up there at all.

Q. And the Alfred Stewart claim was investigated by by yourself and Mr. Griswold, and Mr. Cobban, together, was it not?

A. Yes, sir, and Mr. Stewart; Mr. Stewart was there, also.

Q. It is true that you three men went on to the locations and were making your examination of the timber to

(Testimony of Charles A. Jakways.)

ascertain the quantity before you met Mr. Stewart that day, is it not?

A. I rather think that we were on the claim before Mr. Stewart came back, although I am not sure about that; I think we were, though.

Q. It is true that Mr. Stewart had taken his children to school, and was returning from the school when he found you men on his place?

A. It is my impression that we saw him first when he was taking his children to school, and that he said he would be back as soon as he took his children to school.

Q. That is your recollection about it, now, is it?

A. That is my recollection of the matter now, and that he did take them down to the schoolhouse about a mile and a half, and then came back. I wasn't making an examination of the claim at all, myself; I wasn't a timber estimator.

Q. Mr. Griswold was estimating the timber, wasn't he?

A. Mr. Griswold and Mr. Cobban; I understand that both of them were estimating the timber.

Q. And Mr. Griswold thought that there was not as much timber on the location as Mr. Cobban thought there was.

A. I believe that was the way of it, yes; one of them had a little higher estimate than the other; there was a difference of about fifty thousand feet in their estimates.

Q. And how long were you there?

A. Oh, I don't know, probably an hour, and may be

(Testimony of Charles A. Jakways.)

longer; I couldn't say just how long; not a great while, though.

Q. You don't know how long you were there?

A. Oh, I couldn't say, Judge. We were there long enough to walk through the timber and across the claim.

Q. You were there long enough for that?

A. Yes, sir.

Q. Did you know of the fact of Mr. Stewart locating on this description that they were then examining—that you then examined? A. That he had located?

Q. No, that he did afterwards locate.

A. I believe he did.

Q. Well, you know that he did, don't you?

A. Well, I saw his advertisement in the "Garnet News."

Q. Do you know who his witnesses were?

A. I think that my brother was one of his witnesses, and I think Nels Opsata was one of his witnesses, and I don't remember who the other two were.

Q. You don't remember who the other two were?

A. No, I think those were the witnesses, in fact, but I couldn't say who the other two witnesses were that were advertised.

Q. Do you know who gave those witnesses to the register?

A. No, I do not; I presume Stewart did, but I don't know.

Q. You don't know anything about that?

A. Oh, no, I wasn't there when he filed.

(Testimony of Charles A. Jakways.)

Q. Who drew up the deed in that case?

A. I don't know.

Q. What is that?

A. I don't know; I had nothing to do with that part of the deal. I believe that Mr. Smith, this same lawyer, was the man that closed up the transaction with Mr. Stewart.

Q. Well, didn't you see Mr. Stewart up there?

A. I saw Mr. Smith at Ovando, yes, sir.

Q. Did you know that Mr. Smith went out with Mr. Faust to get Mr. Stewart to execute the deed?

A. Yes, I understood that they went out there for that purpose.

Q. You saw Mr. Smith there, didn't you?

A. At Ovando, do you mean?

Q. Yes, sir. A. Yes, sir.

Q. And you understood that they were going out there for that purpose, didn't you?

A. My recollection is that they had gone out and that they had been out there when I arrived at Ovando, and that they came back to Ovando after I came in there from the ranch.

Q. That is your recollection about it, is it?

A. Yes, sir, that is my recollection about it; I understood that they had been out to Alfred Stewart's place.

Q. And that the deed was executed and acknowledged by Mr. Stewart within two or three days after his return from Helena, and on his obtaining the final receipt?

(Testimony of Charles A. Jakways.)

A. I don't know. I don't know, sir, when he proved up.

Q. You don't know that?

A. No, I don't know when he proved up, and I don't know when he gave the deed. I don't know either one of the dates.

Q. Didn't you see Mr. Cobban and Mr. Stewart talking together there?

A. On that day when we were on the claim, do you mean?

Q. Yes, sir.

A. I am quite sure that they had no conversation whatever, that is the best of my recollection; that they had no conversation whatever.

Q. Your best recollection is that they had no conversation on the claim there at that time?

A. Yes, sir, that is my recollection about it. The incident that makes me believe so, is the fact that Mr. Cobban and Mr. Griswold drew apart from Stewart, and I had some sort of a conversation with Stewart, and Stewart asked me who Mr. Cobban was, and I told him that it was Mr. Cobban.

Q. Well, how would that aid you to recollect the other things?

A. Well, that makes me believe that if he had known who Mr. Cobban was before he asked that question, there might have been a chance of his having had some conversation with Mr. Cobban.

(Testimony of Charles A. Jakways.)

Q. And that is why you think he did not know who Mr. Cobban was?

A. Yes, but I saw nothing of the kind, and still they might have spoken to one another and had a conversation in a general way without knowing who each other were, but I certainly didn't think they had had any conversation before. I don't recall of anything of the kind. Mr. Cobban and I crossed the claim pretty close together, and Griswold was on the other side of it, and if I remember aright, Stewart was with him.

Q. Well, now, sir, isn't it true that at that time and place, that the proposition was made by Mr. Cobban to Mr. Stewart, that he should enter that land, that you were then examining, at his expense, and that he, in consideration of that, was to deed to Mr. Cobban after he had proved up, the timber growing upon the land, and that Stewart was to retain the land itself? A. I never heard of it.

Q. You didn't hear that conversation?

A. No, sir, I did not.

Q. You didn't hear that conversation and that arrangement was not made in your presence? A. No, sir.

Q. It was not made in your presence and in the presence of Mr. Griswold?

A. No, sir, I don't remember it at all.

Q. You remember that distinctly?

A. I remember that distinctly, yes.

Q. But you cannot remember the amount of the check that you sent to your sister?

A. No, sir, I don't remember it at this time.

(Testimony of Charles A. Jakways.)

Q. And the conversation referred to, you don't remember that it occurred at all?

A. No, sir, Mr. Stewart asked me afterwards how much timber there was on the claim, how much I thought there was on the claim, and I told him what they thought about it. That was the extent of my agreement with Mr. Stewart; he asked me to find that out, and I did so.

Q. Mr. Smith hadn't seen Mr. Stewart previous to his leaving Ovando, with your partner, Mr. Faust, had he?

A. Not to my knowledge, I don't remember anything about it.

Q. How was it that Mr. Smith and your partner came up—went up from Ovando to meet Mr. Stewart with a deed already prepared, and that he returned to Ovando with the deed executed, unless there had been this arrangement made, as I have called your attention to?

A. Mr. Faust was a notary public, and I understood that Mr. Smith had taken Mr. Faust out to get Mr. Stewart's signature, and as a witness, and I understood Mr. Smith acted as the attorney in the matter, and that Mr. Faust took his acknowledgment as a notary.

Q. Yes, but Mr. Smith was an attorney in Missoula, wasn't he? A. I believe so, yes, sir.

Q. How do you explain, then, that this deed which is exactly in accordance with the arrangement that the Government claims was made in your presence, when you were examining the land, was made previously, and all ready prepared at the time Smith and Faust went out there to get Stewart's signature to it?

(Testimony of Charles A. Jakways.)

A. I don't attempt to explain it at all; I don't know anything about it.

Q. You saw them when you came back, didn't you?

A. Yes, I was at the store when they returned.

Q. And you know, as a matter of fact, that the deed had been executed by Mr. Stewart?

A. No, I did not; I understood it had.

Q. You understood that it was executed, and you understood that they went out there for that purpose, didn't you?

A. That was my understanding from their statements; I don't know anything about it.

Q. I understood you to say that you didn't know how much money was loaned by your firm to Opsata and to Stewart?

A. I don't know the exact amount, no. I told Mr. Faust that I thought it would be all right to give them whatever money they needed in the matter.

Q. You told Mr. Faust that?

A. Yes, I told him that I thought they were good for it; they had always paid their bills with us at the store.

Q. They were good for it, you thought?

A. Yes, sir. That they were good for it, yes, sir.

Q. That they were good for it in any sense except that you believed they were honest? A. Yes, sir.

Q. What had—what lands did Mr. Opsata have?

A. Oh, he has got a homestead and two hundred head—

Q. Two hundred head of what?

(Testimony of Charles A. Jakways.)

A. A homestead and a couple of hundred head of cattle, something like that; I don't know how many cattle, something like that, though. Three-fourths of a railroad section of land also, paid for, and title to it, and has got a good honest face on him.

Q. I am asking you what he had at the time this loan was made? A. Well, I have told you.

Q. You swear that he had that property at that time —do you? A. Yes, sir.

Q. And the land proved up on?

A. To the best of my knowledge, I think he had proved up on his homestead at that time; I am quite sure that he had; I am quite positive about it.

Q. Well, you don't pretend to have any absolute knowledge about it?

A. His homestead was taken as a pre-emption, and he filed. His pre-emption ran out and he changed it to a homestead. He filed on it in 1893 or 1894.

Q. You wouldn't swear positively to that, would you?

A. No, I wouldn't swear positively that he had filed on these lands. I couldn't, no, I couldn't swear positively that he had filed on the land at that time. If I had certain date here that I have got at home, I could tell exactly.

Q. Then you loaned him the money on his face, did you?

A. Yes, certainly; I certainly did, with the expectation that he would pay it back, and that he was good for it.

(Testimony of Charles A. Jakways.)

Q. But with no note to evidence a loan, and being entirely uncertain as to when he would pay it back?

A. We had no evidence of a loan; it was charged to him on the books, I believe. I don't know that I ever saw the entry on the books, for that matter; I believe it was, though.

Q. You believe it was on the books?

A. Yes, sir, I suppose it was. We had made a good many loans to him before that time, and since.

Q. Well, now, name one loan. You say you made a great many loans of a similar character, and charged them to him before, and since, now name one that you made to him?

A. We loaned him some money in the Spring of 1901, I believe

Q. You loaned him some money in the Spring of 1901?

A. Yes, sir, either then or in 1900, we loaned him something like two hundred dollars, to make the payment on some railroad land. We had made a number of loans to different people, probably a hundred other loans before or since.

Q. Well, now, name one that you have loaned of the hundred others before or since?

A. Well, we loaned him money also at different times, and we have loaned him up as high as three hundred dollars, I think, last winter, when he wanted it to send to his father or his father in law, who was sick

(Testimony of Charles A. Jakways.)

and was being operated on in Indiana. I don't remember any other special amounts or times.

Q. Well, now, a great many times before and since have resolved themselves down to two.

A. Well, that is the only two that I can recall that we loaned to him.

Q. And these loans that you made to him, and this last one here, when you gave him some money to send East to his father in law? A. Yes, sir.

Q. How much did you give him at that time?

A. My recollection is that it was something like three hundred dollars. There were some other amounts of the same kind, either before or afterwards.

Q. When did you loan him the three hundred dollars?

A. Well, that was two years ago this last winter—a year ago this last winter.

Q. A year ago now, then?

A. Yes, sir, a year ago this last winter, I don't remember just when.

Q. That was the time his father in law was sick?

A. Yes, that is the time his father in law was back there on a visit and stayed there all winter, and while he was there he was taken sick and while he was there he was operated on.

Q. Operated on for what?

A. Something the matter with his bladder, his water-works were out of whack, and then they found out there was nothing the matter with them, and then

(Testimony of Charles A. Jakways.)

he came back here and went from there to Deer Lodge. I believe he had some absent treatment from the Christian Scientists, a woman, I think, for the same thing.

Q. How much interest did you collect of Opsata?

A. None at all.

Q. No interests? A. No, sir.

Q. How long did he have the three hundred dollars?

A. Well, he had it until the old man returned; the old man came back and he owned some mining property over at Blackfoot city, and came down to his son in law to stay; that is my recollection about it. His father in law is a miner up at Blackfoot city.

Q. And you charged him no interest at all?

A. No, sir.

Q. And took no note from him, either?

A. No, sir.

Q. Took no note or anything?

A. No, sir, just charged it to him on the books of the firm.

Q. When was it that you loaned this hundred dollars to him that you mention?

A. Something like two hundred dollars, I stated.

Q. Well, two hundred dollars, then?

A. I believe that was either in 1900 or 1901. Thinking of it again, I believe it was in 1900, the spring of 1900, whenever it was.

Q. You think it was in the spring of 1900?

A. Yes, I remember the loan being made to him, to

(Testimony of Charles A. Jakways.)

make his first payment on some railroad land that he had bought.

Q. How long did he have that money, Mr. Jackways?

A. In June of that year he sold his cattle, and he gave us the check to balance up his account, and the check balanced up his account and left something over, and we owed him something after that.

Q. How much did you owe him?

A. I don't know.

Q. Did you ever owe him before that?

A. Yes, sir, before and since.

Q. Your books show that, do they?

A. Yes, sir.

Q. Now, can you name any other time?

A. I don't know as I can. If you will wait until the books get here, you can see a hundred accounts like it.

Q. A hundred accounts like that? What do you mean by that?

A. Well, we carry accounts of three hundred people like that in our business, and I presume we can pick out a hundred people that do business with us in that very way. They would make money in some way and get a check for it, and turn over the check to us, and sometimes draw the money out and sometimes leave it there, and then probably the account will run behind before they get another raise.

Q. Of course, in other words, they buy goods of you?

A. Yes, sir.

Q. And they buy whatever they need to live on?

(Testimony of Charles A. Jakways.)

A. Yes, sir, and when they sell something and they get a check from the persons that they sell to, they turn the check in to us, to be placed to their credit.

Q. And when they sell something and they need to buy, they turn the check over to you from the persons that they sell to? A. Yes, sir.

Q. And they then turn the check over to you to pay for whatever they have bought from you?

A. Yes, they turn the check over to us to be placed to their credit.

Q. Why, certainly. In other words, they turn their check over to you to pay their accounts.

A. Why certainly, I thought you had caught on to that long ago; that is the general way of doing business in this country among the merchants; they generally accomodate their customers. We buy goods of them and sell them goods to make money out of them; I think it is a very progressive idea, indeed. And you will catch on to lots of things if you stay in Montana a while.

Q. You and Griswold went there to look at the Hoyt claims, did you? A. Yes, sir.

Q. And Mr. Griswold advised you to take these claims, didn't he?

A. No, sir, Mr. Griswold didn't give me any advice.

Q. Didn't he say the claims were worth a good deal?

A. He said they were fine claims.

Q. That is what he went there for, isn't it?

A. I believe so.

Q. You were not an estimator and he was?

(Testimony of Charles A. Jakways.)

A. Yes, sir, that is a fact, looked over Doney's homestead the same day, and if I remember right, we took dinner with Doctor Hoyt.

Q. Didn't you have a conversation with Mr. Griswold in regard to these claims?

A. Very likely I did; I had lots of conversations with him about them, yes.

Q. And in substance, wasn't this proposition made to Mr. Griswold, that those Hoyt claims that you say were so good, were in fact good, and that you could manage it so— A. The what?

Q. That you could manage it so that there could be a considerable margin over the hundred dollars which was to be paid to the Hoyts and that margin you would be willing to divide with Mr. Griswold?

A. No, sir, no such a proposition made at all.

Q. You had no talk of that kind?

A. I don't remember of any such talk at all. We talked over the amount of timber, and saw what nice claims they were, and remarked about it, and the Doney claims, too.

Q. Didn't you, as a matter of fact, talk with Mr. Hoyt in regard to selling these claims to Mr. Cobban?

A. No, I don't think I had any talk with Mr. Hoyt regarding the claims, except upon the day he deeded.

Q. Except what?

A. Except upon the day that he deeded.

Q. Where did he deed?

(Testimony of Charles A. Jakways.)

A. He deeded in our store at Ovando.

Q. And you drew the deed, did you?

A. No, sir, I did not; Mr. Smith was there with the deed. I don't remember whether he drew the deed or not; I was writing at the desk at the time the deal was being made, and I could hear what was going on. I heard some conversation in regard to the matter at the time.

Q. You didn't loan any money to the Hoyts, did you?

A. No, sir, I did not.

Q. Well, did your firm loan any money to the Hoyts?

A. I believe they did; that was my understanding of it. Faust did the business, if it was done.

Q. Did you know anything about what notes were given for the money you loaned to Hoyts?

A. I think he gave us his note for that money; I believe I have seen it.

Q. But you won't swear that he did, will you?

A. My recollection of it is that he did, yes, sir; I think he did; I am quite sure that he did.

Q. Did the Doneys get the money from you?

A. No.

Q. What is that?

A. No, not from me they did not.

Q. They got it from your firm?

A. I believe they did.

Q. Do you know anything about the circumstances under which they got the money?

A. No, sir, I do not. I think I took the final proof

(Testimony of Charles A. Jakways.)

on Doney's homestead; the timber claims, I don't know anything about; I don't know even where they were.

Q. And that arrangement was made between Mr. Faust and the Doneys.

A. Yes, sir, if there was any made.

Q. What is that?

A. If there was any arrangement made, he made it.

Q. And the money extended to them in the same way? A. Yes, sir.

Q. Given to them in the same way, was it?

A. Yes, sir.

Q. And paid back when the deed was executed to Mr. Cobban?

A. I don't know when they were paid back.

Q. What is that?

A. I don't know when they were paid back; I don't know about that.

Q. You don't know how much Mr. Doney got for his timber?

A. No, I don't know about that; I don't know a thing about his transactions with Mr. Cobban, only I remember him stating that he didn't want to sell the land, that is, his homestead, that he only wanted to sell the timber on it.

Q. Did you have anything to do with the Muchmores?

A. Not a thing in the world; not the least thing in the world.

Q. But the money came from your firm, didn't it?

(Testimony of Charles A. Jakways.)

A. I understand it did, yes, sir.

Q. But you know nothing about it?

A. Nothing at all about it. I think I know where Bert Muchmore's claim is, but I don't know where the other Muchmores' claims were.

Q. Mr. Faust loaned all the money that was loaned on these Muchmore claims, and you knew nothing about it?

A. He may have spoken to me about it; I don't remember that he did, though. The Muchmores had done lots of business with us, and do lots of business with us every year, and we like to accommodate them; they are good people.

Q. And all these advancements of money to buy up all this land, was a business proposition of your own and your firm's, in which Mr. Cobban had nothing to do?

A. As far as I know, it was.

Q. You have no knowledge about it now?

A. No, I never heard Mr. Cobban say that he advanced money to us, and I know nothing about him advancing money to us; he may have said to Mr. Faust something about it, but he never did to me.

Q. You never heard Mr. Faust say anything of the kind?

A. No, sir; Mr. Faust didn't say anything of the kind. He didn't say very much unless it was a vital matter: he doesn't talk very much; he doesn't say anything about a matter unless it is of some importance. I leave the management of the store and the keeping of the

(Testimony of Charles A. Jakways.)

books to him, and he leaves the management of the ranch and the mill interests to me. We have perfect confidence in each other in regard to that matter.

Q. You sold your claims, didn't you, that you took up six years ago, to the Wisconsin firm, didn't you?

A. Yes, sir.

Q. And you got an advance of a hundred dollars?

A. It was worse than that.

Q. Well, what do you mean by that?

A. Well, more; you mean an advance of a hundred dollars, and expenses over the purchase price, don't you?

Q. Yes, sir. A. More than that.

Q. A hundred and fifty dollars, would you say?

A. More than that.

Q. Do you remember how much you got for your own claim? A. Yes, sir.

Q. How much was it?

A. Seven hundred dollars, I believe, exactly, or about that; very close to seven hundred dollars.

Q. Over and above the expenses you mean?

A. No, that was the entire consideration.

Q. So that there was two hundred dollars that you made out of it?

A. Something like that, yes, sir.

Q. And Faust took up a claim the same way, didn't he?

A. Took up a timber and stone claim, yes, sir.

Q. And he sold it to the same people, didn't he?

(Testimony of Charles A. Jakways.)

A. Yes, sir.

By Mr. BICKFORD.—We object to the examination of the witness upon the matters now being brought out by counsel, as not being proper cross-examination. Counsel will have a hard time to show how these things have any relevancy whatever to the direct examination of the witness, and as to the relevancy of the matters called out by him, to the issues in the case.

A. I believe he did, yes, sir.

Q. So you have been familiar with taking up lands in this way and selling it at some profit, for some years, have you not?

A. Oh, yes, I have been familiar with some of the cases.

Q. Well, during all of this time that you were operating with Mr. Griswold, up to that time, did you know what his reputation for truth and veracity was?

A. No, I heard something about it.

Q. At that time? A. Yes, sir.

Q. Who did you hear it from?

A. Oh, I heard it from Kilburn, and I heard it from Arnold Mickels, and I think I heard a conversation or Mr. Griswold by C. H. McLeod of the Missoula Mercantile Company, manager of the Missoula Mercantile Company. I think I heard a conversation with him in regard to the reputation of Mr. Griswold. There may have been others, but I don't recall any others at this time.

Q. Mr. Kilburn, and Mr. Mickels, and Mr. McLeod?

(Testimony of Charles A. Jakways.)

A. Yes, sir.

Q. Did you have a conversation with Mr. McLeod in regard to Mr. Griswold?

A. His name came up in some way or other, I don't remember just how, in the store of the Missoula Mercantile Company. When I was down there Mr. McLeod spoke to me at that time—spoke to me in regard to Mr. Griswold.

Q. When was that, Mr. Jakways?

A. I don't believe I can say when it was; quite a long while ago, but it was during the time that Mr. Griswold was contracting with the Blackfoot Milling Company for the cutting of some timber on Salmon Lake, on the Clearwater.

Q. Did Mr. McLeod inform you of the fact that Mr. Griswold was then indebted to that company for upwards of sixteen hundred dollars for supplies that they had furnished him?

A. No, I don't think that he did.

Q. And that he paid them very soon after?

A. No, I don't think he told me anything of the kind.

Q. Well, what did Mr. McLeod say?

A. Well I couldn't give his exact words.

Q. Well, can you give the substance of it?

A. Well, I don't believe I could. But in substance the remarks were that if he didn't keep away from old Mother Stairs, and the Third street whores, he would go busted; that was the substance of the talk.

Q. Old Mother Stairs?

(Testimony of Charles A. Jakways.)

A. Yes, old Mother Stairs.

Q. Well, what else did you hear him say?

A. Well, that is all Mr. McLeod remarked; he didn't use very many words.

Q. Well, now, what is Mr. Mickels, what does he do, and who is he?

A. Well, he was operating under a subcontract for Mr. Griswold, as I understood the matter.

Q. And Mr. Kilburn was working for Mr. Griswold too, wasn't he? A. I believe so, yes.

Q. Both of them were working for him, were they?

A. Yes, sir.

Q. Now about Mr. Mickels, what have you to say about what Mr. Mickels said?

A. He simply said that Mr. Griswold hadn't done what he had agreed to.

Q. In what particular hadn't he done what he had agreed to?

A. I don't think he went into the particulars; he said he hadn't done as he had agreed to, that is about all.

Q. Without going into the particulars, you don't know anything about it?

A. I don't know anything else, no, sir.

Q. Well, now, take up Kilburn's conversation; what was Mr. Kilburn, and what had Mr. Kilburn heard?

A. Well, he said that he was crooked.

Q. What did he say?

A. I don't think he said very much more than that.

(Testimony of Charles A. Jakways.)

Q. And Mr. Kilburn was working for Mr. Griswold at the time?

A. I think he was working for Mr. Griswold at the time, yes, sir.

Q. And that is all you heard said?

A. Yes, that is all I remember; there was a great deal of conversation and a great deal has been said ever since he first moved on the Clearwater, when Mr. Griswold first came in there with Mr. Millard, of Wisconsin, in the interest of a Wisconsin firm. I never knew anything against Mr. Griswold then, and I had heard nothing against him before; as far as I knew, he was a good man. As far as my own dealings with Mr. Griswold are concerned, I never had any trouble with him. I am simply giving hearsay.

Q. That is what I want to know, what you are basing it on, and you have named those three?

A. Yes, sir.

By Mr. MAYNARD.—That is all.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Jakways, you were asked if you took up a claim under the homestead law, and I believe you said you did? A. Yes, sir.

Q. And you also took one up under the Stone and Timber Act, didn't you? A. Yes, sir, I did.

Q. Did you ever take up a desert claim?

A. No, sir.

(Testimony of Charles A. Jakways.)

Q. I suppose you didn't because you didn't consider it would be profitable to do so?

A. A desert claim, do you mean?

Q. Yes?

A. Well, not exactly that; if I found a desert claim that I could get water on to that could make it profitable, I would take one up.

Q. Well, you don't know of any reason why you shouldn't take advantage of a law of the United States that you know of?

A. No, sir; I am a citizen of the United States.

Q. How did it come about, Mr. Jakways, if there was any reason for it, that your brother Lewis and Mrs. Hawthorne, and Mrs. Faust, took up claims in 1899, and not prior to that time?

A. How they took them up then and not prior to that time?

Q. Yes. For instance, why hadn't your brother Lewis taken up a claim prior to that time, if you know?

A. I am sure I don't know of any reason except—

Q. Well, was the taking up of this claim by reason of the fact that new surveys were made in February?

A. Yes, new surveys had been made, and those surveys covered some tracts of timber that were good timber land, and close to a driving stream.

Q. Prior to that time those were not available to entry, were they?

A. No, sir, they were unsurveyed.

Q. Now, the counsel stated to you that, or asked you

(Testimony of Charles A. Jakways.)

if Mr. Griswold, when he met you on the road didn't ask you to aid him in the work in which he was engaged, to which you answered, "Yes." A. Yes, sir.

Q. Now, I wish you would state what work he said he was engaged in at that time, and what aid he wanted rendered him?

A. My recollection of that is, that he spoke of my having considerable knowledge of a lot of little tracts of land around the country, of forty and eighty acres, tracts that had been homesteaded—tracts adjoining pieces of land that had been homesteaded until they were left out, and they were timber lands, mostly and available for that purpose. He said "Jakways, you know where those tracts are, and I want you to go along with me and show me where they are." And I told him I would do so.

Q. Was that all there was to it?

A. That is the only work that I did in connection with Mr. Griswold in showing him these tracts of land. Some were in section 34, township 16 north, of range 30, and some were in section 32, township 16 north, of range 30. We also looked over together a portion of the country that lies north of section 34, before mentioned, together, to see if there was any desirable timber in there, but we found none. They ran into lodge poles up in the mountains, that is, small timber, you know. They were in a portion of section 18, unsurveyed, in township 15 north, of range 13 west. I think

(Testimony of Charles A. Jakways.)

there were some other tracts, but I don't recall them now.

Q. Well, now with reference to the talk about which you testified, that you had with him on the road, when he desired to have you aid him in selecting out these small tracts we have referred to, homesteads, and so on—by what means did he then talk of acquiring the title to these tracts of land?

A. Why, by the application of lieu land script.

Q. Do you mean by that Forest Reserve Lieu Land Scrip? A. Yes, sir, Forest Reserve.

Q. How did it come about that you went with him to see the Hoyt claims and the Doney claim, Mr. Jakways?

A. I don't remember; I think I went at his request; that is my recollection about it, although I am not sure.

Q. Well, now you spoke of your desire, from a standpoint of your business, to have the public lands in your county taken up, and particularly the lands that timber was on? A. Yes, sir.

Q. How, if at all would that promote your business interests there, Mr. Jakways?

A. My past experience has been that people that took up timber claims sold them and made money out of them, and whenever they sold them and made any money out of them, they spent it freely, as a usual thing.

Q. Well, now, do you remember to what extent, if at all, any of these people were indebted to you in the

(Testimony of Charles A. Jakways.)

summer of 1899, Doctor Hoyt or Mr. Doney or any of the Muchmores, or Stewart or Opsata?

By Mr. MAYNARD.—I object to the question upon the ground that the books of account of the firm of Jakways & Faust and of the witness, are the best evidence of the fact, and that the witness has a number of times testified that he gave little or no personal attention to the bookkeeping part of the business; and it also appears from the testimony of the witness, that he has no knowledge on the subject.

A. No, I don't know to what extent they were indebted, or whether they were indebted at all, or not.

Q. Well, do you now recall any of them being indebted to you to such an extent as that you at that time had some apprehension about the collection of the bills against them?

By Mr. MAYNARD.—I object to the question upon the ground that the books of account of the firm of Jakways & Faust and of the witness, are the best evidence of the fact, and that the books themselves showing the business relations between these debtors and the firm of Jakways & Faust are the best evidence of the facts sought to be elicited from the witness, and that the witness has a number of times testified that he gave little or no personal attention to the bookkeeping part of the business; and it also appears from the testimony of the witness, that he has no knowledge on the subject.

A. Well, Mr. Faust had charge of the book accounts,

(Testimony of Charles A. Jakways.)

and when he had any apprehension as to the payment of an account by a customer who had chattels security in the way of cattle, and things of that kind, I would ask him to go and make an examination of their stock and see what assets they had. He didn't do so in any of these cases; he didn't mention anything of the matter to me with reference to any of the cases of these people at that time.

Q. Well, now, what have you to say now as to your having had at that time any apprehension concerning the state of your accounts with these people. I refer to you, yourself, personally?

A. I had none at that time, no, sir.

Q. Well, if you had, a trifling matter of a hundred dollars wouldn't have been much of a consideration, would it, Mr. Jakways? A. Oh, no.

Q. Now, you were asked by the counsel for the Government whether you heard the talk that took place between Mr. Griswold—between Mr. Cobban and Mr. Griswold and Mr. Stewart, at Mr. Stewart's timber claim, in which Mr. Cobban agreed to advance all the money that was necessary in consideration that Mr. Stewart should convey to him the timber, and should retain the land himself for pasturing purposes?

A. Yes, sir.

Q. And in answer to that question, you said you didn't hear that conversation?

A. Yes, sir, I did.

Q. Now, what have you to say as to such conversa-

(Testimony of Charles A. Jakways.)

tion having taken place in your presence, Mr. Jakways?

A. It positively did not take place in my presence.

Q. Or hearing?

A. Or hearing; I never heard it at all.

Q. And if it took place at all, have you any knowledge or information other than what you have heard, as to what Mr. Griswold testified to here, about such a conversation having taken place?

A. None whatever.

Q. Now, you were also asked by counsel how you account for the fact that the Stewart deed was executed exactly in conformity to the agreement which the Government claims to have been made with Stewart; to which you said that you couldn't account for it at all?

A. Yes, sir, I said that.

Q. What have you to say as to whether you know that the Stewart deed was made in conformity with this agreement that is alleged to have been made?

By Mr. MAYNARD.—I object to that question, for the reason that it is not proper redirect examination.

By the EXAMINER.—You can answer the question, Mr. Jakways.

A. I don't believe I know what the Government claims that agreement to have been.

Q. The Government claims, according to the testimony of Mr. Griswold, that Mr. Cobban and Mr. Stewart agreed on the morning when—or the day when you and Mr. Cobban and Mr. Griswold and Mr. Stewart were

(Testimony of Charles A. Jakways.)

looking over Mr. Stewart's claim, that Mr. Stewart then agreed that he would make final proof on the land and Mr. Cobban would furnish all the money necessary for that purpose, and that having made the final proof, he would then convey the timber to Mr. Cobban, and retain the land himself for pasturing purposes. Now, what have you to say as to what your knowledge is, or as to whether Mr. Stewart did convey the land in accordance with that agreement or not?

A. I don't know whether he did or not. I understood that he received some money other than that would be required to pay for the land.

Q. That is to say, Mr. Jakways, so far as you have any information about the matter at all, it was not in accordance with any such agreement?

A. Yes, that is true.

Q. In other words, he was paid more money or rather some in addition to what was necessary to make the proof? A. Yes, sir.

Q. For the conveyance of the timber?

A. Yes, sir; as far as any information I have.

By Mr. MAYNARD.—I move to strike out the statement of the counsel as being leading, and for the further reason that it is incompetent as proof in this case; and for the further reason that it is testimony of the counsel and not of the witness.

Q. Now, you don't know anything, I suppose, Mr. Jakways, about what negotiations passed between your

(Testimony of Charles A. Jakways.)

partner, Mr. Faust, and Mr. Stewart, after he made final proof, and before he made his conveyance?

A. No, I don't know anything about it.

Q. So that if it be a fact that your partner, Mr. Faust, and the attorney, Mr. Smith, went to Mr. Stewart's house and took this conveyance, you are not able to say whether it was in accordance with an arrangement that had been made after final proof, with your partner, Mr. Faust, or whether it was in accordance with some other arrangement?

By Mr. MAYNARD.—I object to the question for the reason that it is leading, and so manifestly so, that it is a clear violation of all the laws of evidence.

By Mr. WALSH.—I will withdraw that question; I confess that the question is leading.

Q. Mr. Jakways, I wish you would state what you do know, if anything, about the arrangement by which Stewart conveyed his claim to Mr. Cobban?

A. I don't know a thing in the world about it. I will volunteer this statement.

By Mr. MAYNARD.—Well, I object to your volunteering any statement, Mr. Jakways.

Q. You may proceed, Mr. Jakways, and state what you have to say with reference to the matter?

By Mr. MAYNARD.—I object to the witness, on his motion, volunteering testimony in this case.

By the EXAMINER.—Yes, the proper way would be

(Testimony of Charles A. Jakways.)

to put questions to the witness, and have him answer them.

Q. Now, Mr. Jakways, if there is anything you know, anything you know about the matter, I wish you would state what it is?

A. I was going to say that I told Alfred Stewart that if he wanted any money to prove up on his claim, that we would loan it to him; that is what I was going to say.

Q. You stated, in answer to the question addressed to you by counsel, in connection with the testimony you gave of the fact that you had taken up a timber claim, and had subsequently sold it, that you were familiar with the method of taking up lands, and then selling them at a profit. What is the motive, usually, Mr. Jakways, that usually actuates the people in your locality in taking up public lands?

A. Taking up homesteads for a home and any other land, for the purpose of cultivating them, or probably with the expectation of selling them at a profit.

Q. Do you know of any people that ever took any lands up in that section of the country, and if you do, state who they are that took them up, expecting to suffer a loss by taking them?

A. Oh, I know none of that kind.

Q. Mr. Jakways, do you now recall the names of any other parties who took up timber claims in that locality, and who sold to Mr. Cobban—and with which

(Testimony of Charles A. Jakways.)

you or your firm were in any way connected, than those you have told us about?

A. Well, let me see, what ones were you questioning me about?

Q. Well, there is your brother, Lewis Jakways?

A. Yes, sir.

Q. And Mrs. Hawthorne and Mrs. Faust, and the Hoyt claims? A. Hoyt, yes, sir.

Q. And the Doney claim and the Muchmore claims, and the Opsata and Stewart claims?

A. Well, there is the claim of Charlie Johnson.

Q. Now, what, if anything, did you have to do with Charlie Johnson's claim?

A. I showed him his claim.

Q. What else?

A. Well, if I remember right, I was advertised as a witness for him, although I am not sure of that.

Q. When did he file on his claim?

A. He filed in Helena.

Q. When, I said?

A. Oh, when? Probably May or June, I wouldn't be sure.

Q. What further did you have to do?

A. That was all.

Q. Did you have anything further to do with the disposition of the claim?

A. I did in a way, yes, sir. I had nothing to do with the transfer of the claim, but Charlie Johnson told me that if there was—if I knew of any opportunity to sell

(Testimony of Charles A. Jakways.)

his claim, to let him know, and he also asked me how much I thought the claim was worth, and I told him—I notified Charlie Johnson—this was quite a while after he had made his proof—that Mr. Cobban would give him a thousand dollars for it.

Q. That Mr. Cobban would give him a thousand dollars for it?

A. Yes, sir, and he deeded it to Mr. Cobban, as I believe, for that amount, although I don't know anything about that transaction.

Q. Your connection with his claim would seem to be substantially the same as your connection with your sister's claim and your brother's?

A. Just about the same thing, with the exception that Johnson used his own money, didn't borrow any money from us to prove up with.

Q. And with that exception, you are not able to see any difference between the facts and circumstances with reference to the different claims mentioned?

A. No, he was a lifetime friend of mine, and I would do anything that I could for him, out of kindness and courtesy.

By the WITNESS.—Before Mr. Maynard asks me any more questions, there is something that has come to my mind that I want to correct in my testimony. It is in regard to the loan to Dr. Hoyt. If I recollect correctly, Mr. Faust—I was at the store, and Mr. Faust was going to breakfast, I think he told me that Doctor Hoyt

(Testimony of Charles A. Jakways.)

had asked him for a loan to make his proof with. It was about the time that he was going to Helena, and my recollection now is that I gave Doctor Hoyt a check; that's my recollection about it now. I believe I told him, however, that I didn't know anything about it, but I did give Doctor Hoyt a check, I believe, and made out a note and Doctor Hoyt signed it. Mr. Hoyt told—Mr. Faust told me that if Doctor Hoyt came in for me to fix up the matter with him. I remember that, and I did it.

Q. Now, Mr. Jakways, so that there shall be no doubt about it from the testimony, I wish you would state what conversation, if any, you ever had with Mr. Griswold, or with Mr. Cobban, to the effect that Mr. Cobban would supply whatever money was necessary in order to make entries under the Stone and Timber Act, and give to the entrymen a hundred dollars in addition thereto for their claims?

A. I never had any with Mr. Faust. I believe I heard Mr. Griswold make the statement that the people he represented, I don't know who he represented; that was along when he first came up there—would give a hundred dollars above the Government price and the expenses of proving up, for a timber claim; I believe I did hear him say that.

Q. Now, what conversation, if any, did you have with any of the entrymen or entrywomen, concerning whom you have been questioned, with regard to their

(Testimony of Charles A. Jakways.)

receiving a hundred dollars over and above the expenses of acquiring their claims for them?

A. I never had any.

Q. Mr. Jakways, it would appear from your testimony, that the amount remitted by you to your sister upon the sale of her claim, was not the entire consideration received upon the sale of the land, less the actual cost of acquiring the claim, is that correct?

A. Yes, sir.

Q. There is some deduction from it?

A. Yes, sir.

Q. What occasioned the fact of your not remitting to her the entire amount of the difference?

A. She told me in a letter—now, this is entirely a private matter, having nothing to do with this case whatever.

Q. Well, the counsel seems to have made something out of it, Mr. Jakways, and I wish you would go on and state what the facts of the matter are?

A. She told me that she would like to have me send her a couple of hundred dollars or thereabouts, to purchase some household effects that she had to have, and that she would like to have me keep the balance of the money, and if I saw any chance of investment for her in this locality, to invest it. The money is still in our hands, I believe—I guess it is in my possession, and she is receiving interest from it.

(Testimony of Charles A. Jakways.)

Recross-examination.

(By Mr. MAYNARD.)

Q. Well, as a matter of fact, so far as you know, Mr. Jakways, that arrangement which Mr. Griswold said that he was going to make with the entrymen under his authority that they should receive a hundred dollars for their services in making the entry, over and above their expenses, was, so far as you know, carried out?

A. He didn't put it that way at all; he made the statement as I said before: These people can get a hundred dollars over and above their expenses, and the purchase money for their claim.

Q. Well, now, then, I say, so far as you know, that arrangement was carried out in every case where the entrymen had any dealings with you or your firm?

A. Is that it?

Q. Yes, sir, that is the question.

A. It positively was not.

Q. Well, now, then, do you know of a single case where any of these entrymen that you have named got their money from your firm, and which we claim was Cobban's money? A. Yes—

Q. And afterwards when they returned the money back again—when they got—the thing was wiped out by their conveying the property to Cobban, where they ever got a credit on your books of exceeding a hundred dollars? A. Yes, sir.

Q. Well, just name one?

(Testimony of Charles A. Jakways.)

A. Lewis S. Jakways.

Q. That is your brother, is it? A. Yes, sir.

Q. You know perfectly well that I didn't refer to your brother's claim or your partner's wife's claim? Did you not when you answered that question know that those were excepted?

A. You didn't say so.

Q. Well, I did say so before, in the prior examination, and it was a part of the deal that you made with Mr. Griswold that they were to get a lot of money out of their claims. You knew that, for I called your attention to that. I mean those that you have named, the Hoyts and the Doneys and the Muchmores and the Stewarts and the Opsata, that is what I referred to?

By Mr. WALSH (To the Witness.)—Now, wait a moment, that is no question.

We move to strike out the statement of counsel, for the reason that it is no question, it being a mere statement of counsel.

By the EXAMINER.—He is about to put a question.

Q. Well, do you know of any of those that ever got a credit on your books of more than a hundred dollars out of this deal?

A. I don't know anything about the matter except in the Hoyt transfer. He didn't place the money on our books; he paid his note and kept the rest. I saw his deed and saw it in the condition in which he signed it.

(Testimony of Charles A. Jakways.)

Q. Well, do you know how much he made over and above the cost of proving up?

A. Well, judging his case by—

Q. Oh, no, answer my question.

By Mr. WALSH.—Oh, well, that is what he is doing.

By the EXAMINER.—He is answering your question.

A. Judging his case by the others that I know about, he should have made eight hundred dollars.

Q. Well, do you know how much he did make in fact?

A. Well, he got seventeen hundred dollars for the two claims, according to my understanding about it.

Q. That is your understanding about it, is it?

A. Yes, based on what he told me.

Q. Well, what did he tell you?

A. Well, he told me that he was getting seventeen hundred dollars out of the two claims.

Q. When did that conversation take place?

A. When he made the deed.

Q. At your store? A. Yes, sir.

Q. Well, now didn't that conversation come about in this way? That you had made him an offer as you had made these other entrymen offers, that you would give them a hundred dollars over and above their expenses? A. No, sir.

Q. And that he refused your offer and went to Missoula, and made an arrangement with Mr. Cobban himself?

A. No, sir.

(Testimony of Charles A. Jakways.)

Q. Didn't he tell you that he had made an arrangement with Mr. Cobban, himself?

A. Well, he told me something to the effect that he would go to Missoula and make the deal with Mr. Cobban himself. I can tell you exactly how the deal came up, if you will let me.

Q. Certainly I will.

A. The consideration named in the deed was two thousand dollars. The amount inserted—that is, Doctor Hoyt insisted, and understood that he was to receive seventeen hundred dollars. When he read the deed over and saw the consideration of two thousand dollars named, he accused Mr. Faust—Mr. Faust and he were talking about the matter, with this man Smith, and he accused Mr. Faust of trying to make three hundred dollars out of it, because the consideration named in the deed was two thousand dollars, when the actual consideration was seventeen hundred dollars. The old man is pretty excitable, and he got worked up about it, and jumped up and down a good deal, and got hot, and finally, I told him if he didn't like the way the transaction was being carried on, that he could go to Missoula and make the arrangements with Mr. Cobban himself. I don't know whether he did or not, but my impression is that he signed the deed that day.

Q. That is your recollection about it, is it?

A. Yes, sir.

Q. You knew that he went to Missoula because he wouldn't accept your offer for his claims of a hundred

(Testimony of Charles A. Jakways.)

dollars each, over and above the expenses and he went to Missoula to make his deal with Mr. Cobban himself?

A. Yes, sir, I deny, that positively, because I am almost positive he never had any talk with anybody on the subject.

Q. Do you know Mrs. L. A. Wells?

A. Yes, sir.

Q. Do you know her well?

A. Fairly well, yes, sir.

Q. What is her reputation for truth and veracity in the neighborhood in which she resides?

By Mr. WALSH.—We object to this for the reason it is not proper recross-examination at all. We haven't brought this man here to testify concerning this matter, and counsel has no right to ask him to testify with reference to the reputation of Mrs. Wells, and the reputation of Mrs. Wells having in no way been assailed by anybody, counsel has no right to attempt to bolster it up, and he has no right to ask the witness any such question, for he certainly has no right to impeach it.

By Mr. MAYNARD.—I am not going to impeach it, but I want him to answer the question.

By Mr. WALSH.—You have no right to bolster up the reputation of Mrs. Wells, and certainly not by the cross-examination of this witness.

Q. Can you answer that question, Mr. Jakways?

By Mr. WALSH.—I submit to the Examiner the proposition as to whether the witness is called upon to answer that question.

(Testimony of Charles A. Jakways.)

By the EXAMINER.—Well, I am in a position where I cannot say much. The only thing for the witness to do is to refuse to answer the question, and the attorney for the Government can then ask me to certify it up to Judge Knowles, and my rule is that if I think the question is improper and should not be asked, I will not certify the question up, and then the counsel can go to the Judge himself, if he wishes to.

By Mr. WALSH.—I do not care to advise the witness not to answer, but I don't think he should be asked about this matter at all. We stand upon that objection.

A. I will have to talk a little before I answer that.

Q. Have to what?

A. I will have to talk a little.

Q. All right, go ahead and talk.

A. Neither Mr. Wells nor Mrs. Wells are people with whom I or my family care to associate. In fact, they are not generally considered highly respectable, they are not my friends. But in answer to this question, I will say that I will not testify as to the reputation for truth and veracity of any woman, unless demanded to do so by the Court.

Q. Is that all you desire to say?

A. That is all, yes, sir.

Q. How far is her home from yours?

A. It is a mile.

Q. Just a mile? A. Yes, sir.

Q. And what is Mr. Wells' business?

(Testimony of Charles A. Jakways.)

A. They have got a little ranch there.

Q. They were living there in 1899, were they not?

A. Yes, sir.

Q. Within a mile from your store?

A. No, within a mile from my house.

Q. A mile from your house?

A. Yes, sir, from my ranch.

Q. From your ranch? They lived a mile from your ranch? A. Yes, sir.

Q. Do you neighbor back and forth?

A. No, sir.

Q. Never? A. No, sir.

Q. Have you ever called at their home?

A. Yes, sir, I have gone through their yard and I have stopped and talked with them, and do at times. I have a head-gate up in my field, and I have to go through their yard to attend to it. I am on speaking terms with them, and have been at all times.

Q. Well, during the year 1899, after you had made arrangements with Mr. Griswold, and while you were working with him, did you not tell Mrs. Wells, at her home, that you were working with Mr. Griswold, assisting him in his contract with Cobban, and that Mr. Cobban was getting these lands for Senator Clark, and that you, yourself, in various ways, growing out of your association with Mr. Griswold in this deal, would clean up from twenty to twenty-five thousand dollars for your part of the business?

A. No, sir, nothing of the kind.

(Testimony of Charles A. Jakways.)

Q. Didn't you tell her that, or substantially that?

A. No, sir, positively not; nothing of the kind.

Q. That is your answer, is it?

A. That is my answer, yes, sir, and I say unqualifiedly and positively, not.

Q. Do you remember—are your business dealings going on with Mr. Cobban now?

A. I don't recollect that we have had any business transactions with Mr. Cobban recently, no.

Q. When did you stop?

A. I couldn't tell you; I couldn't tell you when the last transaction with Mr. Cobban was.

Q. What is that?

A. I couldn't tell you when the last transaction with Mr. Cobban was, I don't remember.

Q. You don't remember whether it was during the past year or not?

A. No, sir, I could not say. We may, however, have had some business transactions with him in the past year.

Q. Well, do you know whether you have or not?

A. I don't know; I don't know anything about it, personally, I have not.

Q. Has your firm? A. I don't know that.

Q. Has it had any business dealings with Mr. Cobban since he stopped buying lands under the Timber and Stone Act? A. I think not.

Q. Then your dealings commenced and ended under this Timber and Stone Act that is now being investigated by the Government? A. What do you say?

(Testimony of Charles A. Jakways.)

Q. Then your dealings commenced with his dealings under the Stone and Timber Act that is now being investigated by the Government, did they?

A. As far as I know, the business that we had with Mr. Cobban was—I don't wish to attempt to say, because I don't know; that is all there is of it.

Q. You don't know? A. No, sir, I don't know.

Q. Well, you know of no business relations that you have had with Mr. Cobban, except from the time you commenced after your meeting him, as you have testified. A. Except from the time?

Q. Yes, sir.

A. Never had any before that, no, sir.

Q. Never had any before that? A. No, sir.

Q. And you don't know when it stopped?

A. No, I don't know when it stopped; I don't remember; I don't know as a matter of fact.

Q. What is that? A. I say I don't know.

Q. As to how many entries were made through money advanced by your firm in the interest of Mr. Cobban, you do not know.

A. No, I don't know exactly; I don't remember.

Redirect Examination.

(By Mr. WALSH.)

Q. Do you know, Mr. Jakways, whether Mr. Cobban's purchases under the Forest Reserve Act in your neighborhood, ante-dated or post-dated any purchases that he may have made from parties who entered claims under the Timber and Stone Act?

(Testimony of Charles A. Jakways.)

A. No, I do not know. I think most of the selections were made, though, after Mr. Cobban's first visit up there. Most of the selections of land that were made were based on scrip.

Q. Do you know of him buying land in that neighborhood upon which proof had been made some years before?

A. I don't believe I do know; I don't think of any.

Q. Anyhow, the first time that you met Mr. Griswold, before you had some talk with him about making selections of lands, with a view to entering them under the Forest Reserve Act? A. Yes, sir.

Q. So that—

A. I also remember Mr. Griswold asking me about the title to timber lands, and of me telling him of several tracts that had been patented for years, but I didn't and I don't know that they bought any of them. I am not conversant with it, and I don't know whether they did or not.

Q. Well, you saw that later on, after these purchases had been made by Mr. Cobban, from parties who had entered under the Timber and Stone Act, entries were made under the Forest Reserve Act by Mr. Cobban? A. Yes, sir, selections were made, yes, sir.

Q. And did you have any business transactions with him in connection with these entries?

A. I believe our firm did. I have seen some correspondence on the desk in regard to some of those mat-

(Testimony of Charles A. Jakways.)

ters, I believe; something in regard to the posting of notices.

Q. Then, it would appear in the period of time covered by your business transactions, to have as much reference to proofs under the Forest Reserve Act as to purchases of lands made under the Stone and Timber Act? A. Why, certainly it would.

Q. Counsel asked you about something in connection—some connection with some business deals or transactions between you and Mr. Griswold, in connection with these lands? A. Yes, sir.

Q. Now, what business transactions, in connection with these lands, did you have with Mr. Griswold, other than looking over the lands that you have mentioned, with him?

A. None, other than that he told me he would pay me for going and showing him the lands, that is all.

Q. Is there any foundation at all, Mr. Jakways, for this question that was asked you, about the conversation that you had with Mr. Wells?

A. No, practically none.

Q. Did you ever have any talk with her about the matter at all?

A. No, sir, I did not. I don't think I ever had any conversation with her about that; it is altogether too outlandish. I ran the lines for Mr. Wells on his claim, that is the only thing I had to do with the Wells.

Q. What conversation, if any, did you ever have with old Doctor Hoyt, with reference to his receiving a hundred

(Testimony of Charles A. Jakways.)

dollars for his claim, or your offering him a hundred dollars for his claim?

A. None whatever. I never had any conversation with him regarding his claim, unless it was some general conversation that might have taken place at the dinner table, about the location of the claim, when Griswold was there, or the day he deeded. There was nothing said about a hundred dollars, or any other sum.

Q. In the last question addressed to you by counsel, he spoke of money advanced by you to these entrymen in the interest of Mr. Cobban? To which of these entrymen, if any, did you advance money in the interest of Mr. Cobban?

A. I never did to any of them.

CHAS. A. JAKWAYS.

Subscribed and sworn to before me this 18th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

JASPER B. SEELY, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Seeley, where do you live?

A. I live in Missoula County, Montana.

Q. What part of the county do you live in?

A. In the northeastern part, that is known as the Clearwater country; it is tributary to the Blackfoot.

(Testimony of Jasper B. Seely.)

Q. What is your business there?

A. I am raising some stock. I am also located on a homestead, and the greater part of the time for the last two years—two or three years—I have been employed on the Lewis & Clarke Forest Reserve.

Q. You what, sir?

A. I have been employed on the Lewis & Clarke Forest Reserve, as ranger.

Q. That is an appointment under the Interior Department? A. Yes, sir.

Q. What were your duties as Forest Ranger?

A. Well, it is a general supervision of an assigned district to me, to see that there are no trespasses on it in any manner, and to use all precautions possible to prevent fire originating or spreading after they have started.

Q. How far is the nearest boundary of the Lewis & Clarke Forest Reserve from your home?

A. Eighty rods, the nearest?

Q. Yes, sir? A. Eighty rods.

Q. Eighty rods. How long have you lived in that neighborhood, Mr. Seely?

A. I have lived in that neighborhood about seventeen years; in that particular neighborhood since 1899. Further down the Blackfoot ten miles, I lived from 1885 to 1889, about four years.

Q. So you have been in that vicinity for the last seventeen years, about?

A. I have been in that immediate vicinity sixteen or seventeen years.

(Testimony of Jasper B. Seely.)

Q. Do you know where Mr. Griswold at one time lived on the Clearwater? A. Yes, sir.

Q. How far from your home is that?

A. I think I may assume that down to Clearwater would be about sixteen miles.

Q. And how far is your place from Ovando?

A. It would probably be about thirty miles; somewhere in that neighborhood.

Q. What familiarity have you with the timber and the timber land in the vicinity in which you live, Mr. Seely?

A. I am entirely familiar with a large tract of timber land, not only there, but further down the Blackfoot river.

Q. Do you know two gentlemen that lived down in your part of the country in the year 1899 by the name of Vital Cyr and Levi B. Cyr?

A. Yes, I knew the men, but I wasn't intimately acquainted with them.

Q. Do you remember them coming to your house during the year 1899?

A. Yes, I know that they did, and that it was in 1899.

Q. And what was the occasion of their coming, what called them there?

A. They started first their business up there, that they wished me to tell them if I knew of any timber claims or tracts of timber that they could locate under the Stone and Timber Act.

Q. What did you do?

A. I told them that I thought I could, and I did show them.

(Testimony of Jasper B. Seely.)

Q. You told them that you knew of some claims, did you?

A. Yes, sir, and I went over some lands and showed them the lines, and also gave them a general idea as to whether or not there was enough timber.

Q. What relation existed at that time between you and Mr. Cobban, Mr. Seely?

A. I don't believe I had ever met Mr. Cobban, or communicated with him at that time in any form.

Q. You were not his agent, then, for the purpose of hunting up these lands? A. No, sir, never was.

Q. What relation, if any, existed at that time between you and Mr. Griswold?

A. None at all; that is, in any manner.

Q. You know the general reputation borne by Mr. Griswold in that vicinity for truth, honesty and integrity, what people say about him?

A. The impression—my impression—

By Mr. MAYNARD.—I object to the witness stating what his impressions are.

A. I will say that it is not very good.

Q. Do you know Mr. L. A. Wells, who lives up in that country, Mr. Seely? A. Yes, sir.

Q. How long have you known him?

A. About ten years, along about that time. I have been personally acquainted with him that long.

Q. Has he received, or has he been given any name other than his Christian name, by which he is sometimes

(Testimony of Jasper B. Seely.)

known in that locality, and if so, what is he generally called?

A. I—there is some name applied to him, but I don't remember what it is. You mean a nickname?

Q. Yes, sir.

A. I just couldn't say that.

Q. You don't know about that? Do you know what his reputation in that neighborhood is for truth and veracity? A. It isn't good.

Q. Do you know of any fact or circumstance, Mr. Seely, that is expressive of the views entertained by the people in that locality, concerning Mr. Wells' truth and veracity?

A. Yes, sir.

Q. What is that?

A. Yes, sir, I know of several instances—one, in a general way, and one in a particular way.

Q. What are those?

A. If a statement of Mr. Wells of any kind is credited to Mr. Wells as the originator of it, it is usually discounted by those that are acquainted with him, and not considered at all—dropped out of consideration. He is somewhat notorious in that line. So much so, that I have seen on a bridge crossing Montour creek, between his place and Ovando, a paper writing posted on the bridge, in the form of a license.

Q. What was it?

A. It was a license for some purpose, and it was filled out and giving Mr. Wells license to lie in—to do all the

(Testimony of Jasper B. Seely.)

lying in the country. I saw it at two different times, on two different days.

Q. How long had it been there?

A. How long it had been there before or since, I don't know.

Q. That was a public highway, was it?

A. It was the most public road there is in that country.

Q. Anything further, Mr. Seely? A. No, sir.

Cross-examination.

(By Mr. MAYNARD.)

Q. Well, I suppose you have seen a good many things written up in private places, yourself, haven't you, that were not creditable to anybody?

A. I don't recall any.

Q. What were you doing in the year 1899, Mr. Seely?

A. A part of the time during the summer of 1899 I was ranging on the Lewis & Clarke Forest Reserve.

Q. What did you say?

A. During the summer of 1899 I was a ranger on the Lewis & Clarke Forest Reserve.

Q. In 1899? A. Yes, sir.

Q. Where was that with reference to the Blackfoot country?

A. It is on one of the tributaries of the Big Blackfoot river, and about sixteen miles, I think, from the river itself.

Q. How far from the Clearwater?

(Testimony of Jasper B. Seely.)

A. Very close to it.

Q. Very close to the Clearwater? A. Yes, sir.

Q. Did you meet Mr. Griswold up in that country at that time, that year?

A. He was at my place there, either that year or the year previous. That is the only time I recall.

Q. Mr. Griswold was living at the Clearwater at that time, wasn't he, and your place was how far from there?

A. About sixteen miles.

Q. Well, you know of a large amount of interest that was being taken in taking up claims under the Stone and Timber Act, don't you? A. I heard there was.

Q. Well, you knew there was, didn't you?

A. I knew that I was interested to the extent of one claim.

Q. And you sold your claim to Mr. Cobban, didn't you?

A. Yes, sir.

Q. You paid for your claim with your own money, did you not? A. Yes, sir.

Q. Or did you borrow your money from anybody?

A. I didn't borrow it, no, sir.

Q. Was it your own money?

A. Yes, sir, I considered it mine.

Q. Well, whom did you get it from?

A. I don't remember that particular money, who I did get it from.

Q. What is that?

A. I don't remember who I got it from, that particular money.

(Testimony of Jasper B. Seely.)

Q. Did you borrow any money from Jakways & Faust?

A. No, sir.

Q. You didn't at any time?

A. Oh, I have borrowed money from them.

Q. How many times? A. Oh, several times.

Q. What do you mean by several times?

A. I mean that I would borrow of them whenever I needed it to get anything I hadn't got. That has occurred a number of times.

Q. Twenty times? A. Possibly.

Q. What is the largest amount you ever borrowed from them?

A. I presume forty or fifty dollars at a time would be the extent of it, that I have actually borrowed of them. I have borrowed larger amounts in a number of instances.

Q. When did you prove up on your claim?

A. I think the final proof was made in January.

Q. Of what year? A. Of 1900.

Q. Final proof was made on your claim in 1900?

A. I think so, yes, sir.

Q. How long after you made your final proof was it before you conveyed to Mr. Cobban?

A. Almost immediately, following—

Q. Almost immediately after you made final proof?

A. Yes, I believe it was either the same day or the following day.

Q. Where were you when—was the land in the Missoula district?

A. No, sir, it was in the Helena district.

(Testimony of Jasper B. Seely.)

Q. In the Helena district? A. Yes, sir.

Q. Who were your witnesses upon the making of the final proof, Mr. Seely?

A. H. C. McNally and George W. Turell acted as my witnesses. I advertised, in addition to these, a man by the name of Spieker, and another by the name of Mickels.

Q. Well, you got your money to pay for the land from Mr. Cobban, didn't you? A. No, sir.

Q. Well, then, from Mr. Catlin? A. No, sir.

Q. From Mr. Dinsmore? A. No, sir.

Q. From Major Pound? A. No, sir.

Q. Well, who was it that you got your money from?

A. I think that particular money was probably some money I had left from the sale of a band of cattle, or, rather, a small bunch of cattle, between sixty and seventy head, I think it was.

Q. You think that money was from the sale of some cattle?

A. Yes, sir, from that particular sale of cattle that I made my payment for the land.

Q. Didn't you borrow some money from Mr. Cobban at any time? A. No, sir.

Q. Nor from anybody in his employ?

A. No, sir.

Q. How did it happen then that you made the sale to Mr. Cobban on the same day that you proved up?

A. By talking with him over the telephone. I talked with him over the telephone.

Q. By talking with him over the telephone?

(Testimony of Jasper B. Seely.)

A. Yes, sir, he was in Missoula, I believe and I was in Helena.

Q. How did you come to talk with him over the telephone?

A. I received a telegram asking me to come to the public telephone.

Q. Well, go on, and you went to the telephone and talked with Mr. Cobban, did you? A. Yes, sir.

Q. Had you ever had any talk with him before in regard to this matter? A. No, sir.

Q. You had never had any talk with him before in reference to the sale of your claim to him?

A. No, sir.

By the EXAMINER.—How long will it take you to finish with this witness, Mr. Maynard?

By Mr. MAYNARD.—Well, it will take some time. I have hardly started with the cross-examination.

By the EXAMINER.—Adjourned until to-morrow morning at ten o'clock.

HENRY N. BLAKE,
Examiner in Chancery.

Friday, April 18th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

JASPER B. SEELY, a witness for defendant, was recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. When you received this despatch from Mr. Cobban to go to the telephone on the same day that you

(Testimony of Jasper B. Seely.)

proved up on your land, did you go? A. Yes, sir.

Q. Did you have a talk with him over the telephone?

A. I presume it was him; I understand it was; I thought it was.

Q. The talk was in regard to your conveying to him the land which that very day you had proved up on?

A. The talk occurred on that day?

Q. Yes, and that was the subject matter of the conversation? A. It was.

Q. Did you go to Missoula that day? A. I did.

Q. And conveyed to Cobban the next day?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent; there is no issue raised as to the validity of Mr. Seely's entry in any shape or form; we object particularly because it is not cross-examination.

A. No, sir, the conveyance was not made complete on that day.

Q. What was the trouble with it?

A. We arrived at terms which were afterwards completed and complied with on the part of Mr. Cobban and myself.

Q. You are a married man? A. I am.

Q. And the reason of its not being completed was the fact that your wife was not in Missoula?

A. That was the reason, I think.

Q. You took the deed home with you from Missoula for the purpose of having your wife execute it and return it, did you not? A. Yes, sir.

Q. You have known Mr. Griswold for some time?

(Testimony of Jasper B. Seely.)

A. Yes, sir; I think I became acquainted with him so that I knew who he was very shortly after he arrived in that country.

Q. Since you have been here in Butte you occupied the same room and the same bed with him night before last, did you not? A. I did, sir.

Q. And at that time you had a conversation with him in regard to this subject matter that we are investigating in this suit? A. Yes, sir.

Q. Talked over the matter of your entry and the many entries that had been made under the Stone and Timber Act during the year 1899, and prior to that time?

A. I talked with him in regard to my own claim and other matters.

Q. You knew of the fact of what one of the witnesses termed the stampede for claims under the Stone and Timber Act during the season of 1899, did you not?

A. I do not know of the testimony of any witness to the effect that there was a stampede.

Q. Well, was there or was there not?

A. No, sir, I would not term it a stampede by any means.

Q. What would you term it?

A. I would term it a good, healthy market for timber lands.

Q. Had you met Mr. Cobban personally previously to your going to Missoula to deed to him?

A. Yes, sir.

(Testimony of Jasper B. Seely.)

Q. Where? A. At Missoula.

Q. When?

A. I cannot give the exact date, but it was subsequent to my application for this land.

Q. What did you meet him for?

Mr. WALSH.—We object to all of this as not proper cross-examination at all.

A. It was just a casual meeting; it happened in relation with other business that I had at Missoula at that time.

Q. That was after you filed and before you proved up that you had this casual meeting with Mr. Cobban?

A. Yes, sir.

Q. You had not seen him before, had you?

A. I don't think that I had ever seen him before.

Q. But you had heard many times and from many sources that he was buying timber claims, had you not?

A. That would depend on the construction you would put on the term "many"; I had heard of him before.

Q. To use your own language, it was a notorious fact, was it not, in that whole Blackfoot country what Mr. Cobban was doing?

A. No, sir. I would qualify that answer, if you wish it.

Mr. WALSH.—Go on and answer it fully.

The WITNESS.—I do not think that many of the people of that country knew hardly anything of Mr.

(Testimony of Jasper B. Seely.)

Cobban's business outside of the fact that he was buying timber land.

Q. Didn't you tell me in this courtroom less than ten minutes ago that it was a notorious fact in that whole country in regards to Cobban buying this timber, and used that very word?

A. I might have used the word, but not in the terms you have given it.

Q. Well, explain the difference, then?

Mr. WALSH.—Now, one moment. This thing has to come to an end some time. I object to this now as not proper cross-examination, and I submit the matter to the Master for determination.

The EXAMINER.—The matter is not within my control.

Mr. MAYNARD.—You put this man on the stand as your own witness—

The EXAMINER.—Please address yourself to the Court.

Mr. MAYNARD.—Yes, sir, that is what I am doing. Counsel put this man on the stand as their own witness, and vouch for his credibility, and I want to know if it is not the A B C of cross-examination to allow me the opportunity to ask him such questions bearing upon this matter as affects the credibility of their witness.

Q. Now, I want you to answer me that question that I put to you, Mr. Seely?

(Testimony of Jasper B. Seely.)

The EXAMINER.—Read the question.

Q. You say you may have used the word, but there was a distinction; now, point out the distinction between what you intended to say and what you did say?

Mr. WALSH.—He has not said anything of the kind.

Mr. MAYNARD.—Let the reporter read it, then.

(The last four or five questions read.)

A. I said I believed it was a well known or notorious fact that he was buying timber in that country.

Q. It was a notorious fact, was it not, as to the conditions of the buying?

Mr. WALSH.—Objected to as not proper cross-examination.

A. I had no knowledge of any conditions, and don't know of anybody else having any knowledge of it.

Q. If you had no personal knowledge by reason of direct conversation with Mr. Cobban, did you not have the knowledge which came from general rumors and general knowledge throughout the entire Blackfoot region as to the terms on which he was buying and the arrangements and agreements he was making with people that were taking up these claims?

Mr. WALSH.—The same objection.

A. I knew of no arrangements or agreements whatever.

Q. That was not the question I put to you, Mr. Seely?

Mr. WALSH.—Read the question and answer.

(Testimony of Jasper B. Seely.)

(Question and answer read.)

Q. Assuming that that is so, Mr. Seely, I ask you to answer the last question that I put to you, not what you knew personally, but what you heard?

Mr. WALSH.—That is objected to as entirely irrelevant and incompetent as being hearsay and not proper cross-examination.

A. Can that be answered by yes or no possibly?

The EXAMINER.—Answer it in your own way.

Q. Just take your own way of answering it, Mr. Seely?

A. It would be a long drawn out answer I think. I knew in a general way from rumors or common, current talk that Mr. Cobban was buying timber up there, but did not know or hear of any terms that he was offering. I also knew of other people that had bought timber lands in that country.

Q. Is that your answer?

A. If that answers your question, it is.

Q. Did you not in the conversation you had with Mr. Griswold when you were occupying the same room with him in this city night before last, tell him that while you had no personal knowledge of these deals, you knew enough about it from other sources not coming within the personal range of your information, to come to the conclusion or formed the belief, that these transactions of Cobban's were as crooked as the trail of a serpent in the sand or words to that effect?

(Testimony of Jasper B. Seely.)

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, and not proper cross-examination.

A. No, sir, I don't use such terms usually.

Q. Did you not say that in substance?

A. No, sir, I don't think I did.

Q. You don't think you did?

A. No, sir. If you will ask me what I did say, I can probably tell you.

Q. Did I not ask you myself in the courtroom within fifteen minutes if you did not say that—use those exact words—in talking to Mr. Griswold at the time that I have now called your attention to, did you not say to me that you did not think that you used those exact words, and then I asked you if that was not the substance of it, and you said yes.

Mr. WALSH.—Objected to as immaterial, irrelevant, incompetent and not proper cross-examination.

Q. Now, answer that question?

A. I think the substance of my conversation with you a few minutes ago in the courtroom in answer to your question to me at the time was that there possibly or probably had been some deals that were not all right, that that was my belief. I did not use the term exact as you quote me.

Mr. WALSH.—To what point in the direct examination is the cross-examination directed as to the reputation of Mr. Wells and Mr. Griswold, to which this witness testified only.

(Testimony of Jasper B. Seely.)

Mr. MAYNARD.—Do you ask that seriously?

Mr. WALSH.—I ask that seriously, yes, sir. To what matter touching the reputation of Mr. Griswold or Mr. Wells is this question directed?

Mr. MAYNARD.—The point is that an examination of the testimony given by Mr. Seely in answer to your questions shows conclusively that it is competent on cross-examination to inquire on every subject matter that I have entered into. If you had confined yourself solely to the single question as to this witness' knowledge of the character and reputation of Mr. Griswold and Mr. Wells it would be competent for me on cross-examination, to inquire into such matters connected with his dealings with Mr. Cobban as affecting his credibility, as bearing on the weight that should be given by the Court to his testimony on direct examination.

Mr. WALSH.—But you are not inquiring about that now; you are inquiring what occurred here in the court-room.

Mr. MAYNARD.—Yes, sir, as to the whole subject matter as to the crookedness of these deals of your client, Mr. Cobban, as the representative of Senator Clark in this case.

Q. Did you not also in the conversation that you had with Mr. Griswold at the time and place that I have mentioned say that before Cobban's operations, the Blackfoot Milling Company had bought lands under terms that were contrary to law.

(Testimony of Jasper B. Seely.)

Mr. WALSH.—Now, I think we had better stop this. You need not answer that question, Mr. Seely.

Mr. MAYNARD.—Very well. Under the rulings, etc., it will be set down for certification to the Court.

The EXAMINER.—The witness has not said anything yet. Let the witness say something.

Mr. MAYNARD.—If we have got to be stopped on elementary questions of cross-examination, I guess we will go there right off.

Mr. WALSH.—Do you care to go into that, Mr. Seely?

The WITNESS.—I do not.

The EXAMINER.—The Examiner will not certify the question up for action by Judge Knowles.

Mr. MAYNARD.—Have you got an answer to the question?

The REPORTER.—No, sir.

Mr. WALSH.—He has refused to answer it under the direction of counsel.

Mr. MAYNARD.—We came in behalf of the Government to compel this witness, and we shall insist upon it, and on the frequent rulings of the Examiner that he has no authority to compel the witness to answer the question, I shall move the Court the first opportunity to get an order to compel him to do it.

The EXAMINER.—There are decisions in the Federal Reporter to the effect that the Examiner is not

(Testimony of Jasper B. Seely.)

required to certify a question up to the Judge of the District or Circuit Court, as the case may be, unless he also gives his opinion that the question is one that is relevant and material and should be answered. In this matter, not being of that opinion, I decline to certify the question up.

Mr. MAYNARD.—There are also decisions that when the Examiner or Master refuses to certify that counsel on their own motion can present the matter to the Court.

The EXAMINER.—Yes, that is correct.

Mr. MAYNARD.—We will have this question settled as to whether counsel can bring men here as witnesses for the defendant in this case and that I cannot have the opportunity of cross-examining them upon any matter relating to the credibility of their witnesses.

Q. Now, Mr. Seely, you have sworn here that Mr. Griswold's reputation is not very good or something like that? A. I believe I have.

Q. What is the nearest that Mr. Griswold ever lived to your home?

A. About 16 miles, I think.

Q. How long did you live within 16 miles of Mr. Griswold?

A. Probably three or four years.

Q. When was that?

A. To give it as approximately as I can now, it would be from about 1895 to 1899, inclusive.

(Testimony of Jasper B. Seely.)

Q. He was then living at Clearwater, and you were living 16 miles away from him, above him?

A. Yes, sir.

Q. Did you have any dealings with him during that time?

A. I did not, that I recall now.

Q. No transactions of any kind?

A. Not of any consequence or moment. I might have stopped at his place for a meal or something of that kind.

Q. And from 1899 down to the present time where has he been living?

A. I do not know, but I think in Missoula a part of the time.

Q. Well, if you do not know where he has been living since 1899, you are not in a position to say that you know of his general reputation for truth and veracity in the neighborhood in which he lives, are you?

A. I am in a position—

Q. Answer me that question.

Mr. WALSH.—He is answering.

The EXAMINER.—Let him finish his answer.

A. I am in a position to testify as to his reputation where he was operating in the Blackfoot country which is also the country where he lived during this time, between 1895 and 1899.

Q. Very well, then. Allowing that you are in a position to testify about his reputation during the four

(Testimony of Jasper B. Seely.)

years of your joint residence up in the Blackfoot country?

A. I believe that I know his reputation as well as anybody in the Blackfoot valley, since I am well acquainted with nearly all of the people in that country.

Q. Why don't you answer my question?

A. I would if I understood them clearly. I beg your pardon if I am not answering them.

Mr. WALSH.—He is doing very fairly.

Q. I say if you did not know where he lived since 1899, you are not in a position to testify as to his general reputation for truth and veracity in the neighborhood in which he lived and has lived since that time?

A. I am to some extent there.

Q. If you don't know where his place of residence is, how can you testify?

A. I believe I testified that I thought he had lived in Missoula a part of the time, anyhow; that is, I think his home is there, but he might not have been there quite a portion of the time himself.

Q. Have you lived in Missoula during those years?

A. No, sir.

Q. Your home has been continuously 30 or 40 miles from there, hasn't it?

A. It has, but I am acquainted with people in Missoula.

Q. Then, the entire business for any testimony that you might give on this subject would be the chance con-

(Testimony of Jasper B. Seely.)

versations that you might have had with some residents of Missoula?

A. And the Blackfoot valley.

Q. And the whole basis of your testimony, then, from beginning to end is among chance acquaintances that you have had with people in the Blackfoot and in Missoula?

A. They are not chance acquaintances.

Q. Well, chance conversations?

A. No, sir, nor chance conversations.

Q. Did you have any occasion at any time in your life to have any specific conversation with any of these men with reference to the character of Mr. Griswold?

A. One at least.

Q. When and where was that?

A. I think Mr. Jakways and I had a conversation as to his reliability in business transactions.

Q. Mr. Cobban's agent, Jakways, the man that was sworn here yesterday?

A. I don't know that he is Cobban's agent or was.

Q. When and where did that conversation take place?

A. I think at Mr. Jakways' place of business.

Q. That was since 1899, was it not?

A. No, sir.

Q. When was it?

A. I could not give you the exact date.

Q. Or year?

(Testimony of Jasper B. Seely.)

A. Well, it was subsequent to the time that Mr. Griswold came to that country.

Q. It is as definite as that, is it? A. Yes, sir.

Mr. MAYNARD.—Well, I am not willing to squander the time of the Court with any such investigations as this.

The EXAMINER.—You have no right to make any remarks of that kind in this hearing.

Mr. MAYNARD.—I have a right to have it appear of record.

The EXAMINER.—You have no right to have it appear of record. You are to question the witness and to make your objections propounded by counsel on the other side, and hereafter, at any hearing before the Court, you can then comment on these witnesses in any way you see fit.

Q. Well, Mr. Seely, did you ever hear in your life that Mr. Griswold was arrested for anything?

A. No, sir.

Q. Did you ever hear him accused in your life of the violation of any law, State or National?

A. No, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. Did you ever hear of him levying blackmail on the Blackfoot Milling Company up in the Bitterroot?

Mr. MAYNARD.—Objected to as not re-examination and as leading. I desire to have it appear in the rec-

(Testimony of Jasper B. Seely.)

ord, that what these people call blackmail there may be a very different construction placed upon it by people that are honest and trying to enforce the laws of the United States.

A. I have heard of a case of that kind.

Q. Now, that your memory is refreshed about the matter, do you remember ever having heard of any accusation made against Mr. Griswold of any violation of any law, State or National?

A. That, if true, would be a violation.

Q. As you understand it? A. Yes, sir.

Q. Now, Mr. Seely, you spoke of the reputation borne by Mr. Griswold in the course of your cross-examination in the Blackfoot country for four years prior to 1899. I wish you would state to what extent, if at all, his reputation has improved in that vicinity since 1899?

Mr. MAYNARD.—Objected to as incompetent, that the defendant has only the right under any rules of evidence to ask the general question, and not to cross-examine their own witness in detail in regard to the matter, and as leading and in every way contrary to the rules of evidence on this subject matter. I object to that question and ask the Examiner, as it is so clearly incompetent, to instruct the witness that he should not answer.

The EXAMINER.—I have no power to make any such rule.

A. I don't think it has improved in any respect.

Q. Mr. Seely, in answer to a question addressed to

(Testimony of Jasper B. Seely.)

you by counsel you stated that you had borrowed no more than $30 or $40 at any one time from Jakways & Faust, but that greater sums had been offered to you. I wish you would state what are the facts and circumstances connected with any offer on the part of Jakways & Faust to loan you any greater sums of money and for what purpose the offer was made?

Mr. MAYNARD.—Objected to as immaterial and irrelevant.

A. I think both members of the firm, both Jakways and Faust, have frequently—several times, advised me that any time that I wanted a few hundred dollars in my business, I could have it. The most recent occurrence of that kind was last fall, in October. Mr. Faust offered me a matter of five or six hundred dollars. I offered him security for the same, and he said he did not wish any.

Q. What occasion did you have at that time to use that amount of money, or what was the business enterprise under consideration at that time?

A. I was contemplating the purchase of some cattle.

Q. You spoke, Mr. Seely, in the course of the cross-examination, about having met Cobban in Missoula some time intervening the time that you filed and the making of your final proof? A. Yes, sir.

Q. I wish you would state what, if anything, was said at that time concerning the acquisition by you of title to land that you had filed on under the Timber and Stone Act?

(Testimony of Jasper B. Seely.)

A. I am confident there was no conversation between he and I relative to the land on which I had made application.

Q. What conversation, if any, did you ever have with Mr. Cobban concerning the sale or disposal to him of your land entered under the Timber and Stone Act prior to the time that you talked with him over the telephone? A. Never any whatever.

Recross-examination.

(By Mr. MAYNARD.)

Q. You said to counsel that you had heard of the case of Mr. Griswold's levying blackmail against the Blackfoot Milling Company?

Mr. WALSH.—I should have said the Bitterroot Development Company.

A. And you said, yes. Did you know or have in mind that it was some other question that counsel intended to ask you than what he really did when you said yes, Mr. Seely?

A. I did not think the question in the first instance was the same as has been quoted by Mr. Maynard.

Q. Well, Mr. Walsh put a question to you and you answered, yes. Now, he says he did not intend to ask that question at all, that it was an entirely different company. Does it make any difference what company it is when you answer, yes?

A. It would make this difference, that I did not know of but one instance, or have not heard of a re-

(Testimony of Jasper B. Seely.)

port of but one instance in which there has been a claim made that Mr. Griswold attempted blackmail against any company.

Q. So when you answered, yes, to the question that you had heard that Mr. Griswold levied blackmail against the Blackfoot company, you did not tell the truth at all, did you?

A. I do not admit yet that the question as put to me in the first instance by the counsel was that it was against the Blackfoot Milling Company; I do not know that it was even now.

Q. You heard what Mr. Walsh said, didn't you, when he said that he intended to put the question as to the Bitterroot Development Company?

A. It is immaterial to me what he said in this case.

JASPER B. SEELY.

Subscribed and sworn to before me 18th day of April, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

WILLIAM M. DRAFFEN, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Draffen, where do you reside?

A. Missoula, Montana.

Q. What is your profession?

(Testimony of William M. Draffen.)

A. I am an attorney at law.

Q. How long have you practiced your profession?

A. Sixteen years.

Q. How long in the State of Montana?

A. Two and one-half years.

Q. And in the city of Missoula?

A. A little over a year; about a year and four months.

Q. I wish you would state whether you were counsel for either parties in an action pending in Missoula county last year or the year before, brought by Chauncey L. Griswold against R. M. Cobban, and if so, for which?

A. Yes. sir. The firm of Duncan & Draffen was counsel for the plaintiff in the case of Griswold against Cobban.

Q. You are one of the members of that firm?

A. Yes, sir.

Q. Who is the other member of the firm?

A. Major A. L. Duncan.

Q. When did the employment of your firm in that case commence?

A My recollection is that it was during the winter of 1901; that is to the best of my recollection without refreshing my memory, I would say that it was during the month of January of 1901.

Q. And how long before the commencement of the action, Mr. Draffen?

A. Well, I formerly practiced law at Hamilton, to-

(Testimony of William M. Draffen.)

gether with Colonel Crutchfield, and I moved to Missoula to live on the 2nd of January, I think of 1901, and along about the 5th or 6th, to the best of my recollection, Major Duncan introduced me to Mr. Griswold. That was my first meeting with him, and it was upon this business relative to a claim that he had against Mr. Cobban.

Q. Was that the first time the matter came under the attention of your firm? A. Yes, sir.

Q. Or had it received some attention from Mr. Duncan prior to that time?

A. I can not say as to that, Mr. Walsh. Possibly a week or two previous to that—I think may be he had talked with Major Duncan. I would not be positive as to that, however, but that was my first meeting with Mr. Griswold.

Q. Now, you wrote a letter, did you not, Mr. Draffen, to one Mr. Zevely, connected with the Interior Department concerning the facts or some facts connected with this matter? A. I did not—

Mr. MAYNARD.—I object to that question as immaterial and irrelevant and entirely incompetent, and as having no bearing whatever upon any of the issues raised by the pleadings in this case, and a question which is put when the whole subject matter has been brought to the attention of the United States Court and in which it was distinctly determined and decided by Judge Knowles that any of the communications which were had between Mr. Zevely, and Inspector of the

(Testimony of William M. Draffen.)

United States, and Mr. Draffin or any member of his firm, after they had been retained by Mr. Griswold as his attorneys, were privileged and confidential communications between attorney and client, and that there was no authority on the part of any Court or any jurisdiction to compel the disclosures of the communications to the officer of the United States of matters which an attorney had gained from his client, and I insist that the witness should not be asked to answer, and that if the questions are put, that he should refuse.

Q. While the action was pending, or before it was instituted and after your employment was begun, you may state whether you did write to Mr. Zevely.

Mr. MAYNARD.—I object to that for the same reasons given in the former objection.

A. Yes, sir, I did.

Q. Have you Mr. Zevely's reply with you?

Mr. MAYNARD.—I object to that for the same reasons as contained in the former objection.

A. I have not, Mr. Walsh. I looked, and my recollection now is clear upon that matter, that I received no reply to the letter that I wrote Mr. Zevely along the lines which I will detail in a moment, but that instead of replying, I received a telegram from Mr. Zevely in which he stated he would be in Missoula at a specified time and asking me if I would be there at the time stated, to which I wired my reply that I would. I will state that in replying to my letter, the first letter that I wrote to Mr. Zevely—

(Testimony of William M. Draffen.)

Q. One moment, you are getting ahead of me. The answer to the question is that you looked for a letter from Mr. Zevely in answer to your communication, and have not been able to find it, and now your recollection is refreshed that you simply got a telegram?

A. Yes, I am positive as to that, that he did not reply by letter.

Q. Now, you, of course, have a letter-press copy-book in your office? A. Yes, sir.

Q. Did you bring it with you, Mr. Draffin?

A. No, and I want to explain why in answer to the first question, Mr. Walsh.

Q. Your subpoena required you to bring it?

A. Yes, that is true, and I have not violated the subpoena in any sense in which I am satisfied you will join me as soon as I explain, if you will allow me.

Q. We will give you ample opportunity before you leave the stand to explain, but I desire you to answer my questions at present. You did not bring the copy-book with you?

A. I have no copy-book, Mr. Walsh.

Q. You mean that in your office you do not keep a copy-book?

A. Individually I do not, the firm keeps one.

Q. That was the copy-book which you were directed to bring, was it not, the book of your firm?

A. I do not so understand it, no, sir.

Q. Did you make a letter-press copy of the letter that you sent to Mr. Zevely?

(Testimony of William M. Draffen.)

A. The first letter?

Q. Yes.

A. My recollection is that I did, Mr. Walsh.

Q. Where is that letter-press copy-book containing that letter?

A. I have looked for it and my recollection is—I keep no copy-book myself. I haven't a copy of any letter that I have written personally since coming to Missoula. I save no copies of any letters to any person either on my own private business or otherwise. There is a firm copy-book used in the business in which Major Duncan and myself are associated, that I have attempted on one or two occasions in on the firm's business. It is a peculiar institution and I just gave it up, and I have endeavored to copy three or four business letters in it and no more, and none of any other kind. I said that to Major Duncan, that I never could learn how to manage it; I would spoil them by putting too much water upon them, and I have never copied any. Personally I have no copy-book myself and never copy any of my letters.

Q. Who copied the letter that you wrote to Mr. Zevely?

A. That is my impression, and I looked for it, and have gone through the copy-books and I could not find it. The copy-books are there, every one, and I have looked through them. As far as the letter is concerned, I am perfectly willing that the Government may bring it, and I would ask and insist that that let-

(Testimony of William M. Draffen.)

ter be produced in justice to myself and anything I might do.

Mr. WALSH.—You will have to address that to the representative of the Government. We are not representing the Government.

The WITNESS.—I understand, but in justice to myself I would like to make that statement. I could state the substance of the letter.

Q. We don't care about that. When did you write the letter?

A. My impression is that I wrote that letter along in March or April, 1901.

Q. Now, did you bring with you the telegram that you received from Mr. Zevely?

A. No, sir, I haven't that; I never save any telegrams.

Q. Did you bring with you any letters that you did receive from Mr. Zevely touching the subject matter of this inquiry?

A. Mr. Zevely has never written me any letters with reference to this matter at all.

Q. You are not able, as I understand you to fix the date very definitely of your letter to Mr. Zevely?

A. Well, just a moment. I said Mr. Zevely had never written me any letter. I wrote to Mr. Zevely here some months ago in Washington with reference to some statement that had been made in the testimony at Helena in the trial of this case, I think, and he wrote me back and said that I could have access to the testi-

(Testimony of William M. Draffen.)

mony as given at Helena; that was all he said, and that is the only letter that I have received from Mr. Zevely in reference to this matter in any way or in any shape.

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Draffin, you have said in answer to my brother Walsh, that your firm were the attorneys for Mr. Griswold in his civil suit against Mr. Cobban?

A. Yes, sir, just like any other client.

Q. And that you formed his acquaintance a short time previous to the suit?

A. Yes, sir. I said a few moments ago that I thought that was 1901; I may be mistaken, and it may be 1900.

Mr. WALSH.—No, I think not; I think it must have been 1901.

The WITNESS.—1901, yes, sir.

(By Mr. MAYNARD.)

Q. Did you have charge of that controversy as an attorney in behalf of Mr. Griswold?

A. Yes, sir, it might be said that I was the active member of the firm in charge of this matter I believe.

Q. What was the suit brought for?

A. My recollection is it was a suit upon an account for something like $3,300 or $3,400. I won't be positive as to the amount, but it was in that neighborhood, I

(Testimony of William M. Draffen.)

Q. Under a certain contract that had been previously entered into between the parties?

A. Based on a contract between Mr. Cobban and Mr. Griswold.

Q. That contract was used in the case, was it?

A. Yes, sir. I don't believe that we set out the contract in haec verba, but in substance.

Q. And the contract itself was used in evidence on the hearing?

A. It was according to my recollection; at any rate my recollection is that the contract was executed in duplicate and we had one of them.

Mr. MAYNARD.—Has the Court got that exhibit, the affidavit?

The EXAMINER.—Yes, sir, it is exhibit "A."

Mr. MAYNARD.—I show the witness Complainant's Exhibit "A."

Mr. BICKFORD.—We object to the witness being interrogated concerning Complainant's Exhibit "A," because it is not proper cross-examination as concerning nothing that was brought out in his examination in chief.

Q. Do you recognize that exhibit as the contract?

Mr. WALSH.—One moment. We object to this on the ground that it is not proper cross-examination of anything concerning anything which the witness was interrogated on direct examination, and an evident at-

(Testimony of William M. Draffen.)

tempt on the part of the Government to supply whatever is lacking in its proof of the identity of the contract, and we call upon counsel to say upon the record to what matter concerning which this witness was inquired of upon direct examination this question is pertinent or relevant.

Mr. MAYNARD.—I cheerfully do so. The witness on the stand was called by the defendant as the defendant's witness, and was asked if he was not an attorney for Mr. Griswold in this civil suit that was pending in the District Court in Missoula between Mr. Griswold as plaintiff and Mr. R. M. Cobban as defendant, and his answer was yes. Certain questions were then put to him relative to that suit and that controversy.

Mr. WALSH.—No, none.

The EXAMINER.—Well, Mr. Maynard makes a statement, and you can correct him.

Mr. MAYNARD.—The witness having been so called and interrogated about the subject matter which appears now affirmatively upon this record as taken by the stenographer, the Government claims that it is clearly competent to interrogate this witness as to what steps were taken by him as an attorney for Mr. Griswold in this suit, as to its termination and anything bearing upon that question and subject matter which was opened by the defendant's counsel.

Mr. WALSH.—We now particularly object upon the ground that the only matters concerning which the wit-

(Testimony of William M. Draffen.)

ness was interrogated was the matter of any communication between himself and one Zevely, concerning the subject matter of this suit, and with reference to that the question as to whether the paper now handed the witness is or is not a true copy of the contract upon which the action was founded cannot possibly have any relevancy whatever. The only subject matter inquired about was the subject matter of the communication between this witness and Zevely and the suit being referred to simply for the purpose of identifying the particular communication inquired about. We also object on the further ground that this witness has no right to be interrogated, nor has he any power to disclose the subject matter or the substance of the contract intrusted to him in his professional capacity.

Mr. MAYNARD.—The answer is that the substance of the contract was set up in the pleadings, and the contract itself offered in evidence and made a part of the record in the case.

Mr. WALSH.—We ask nothing about those matters.

The EXAMINER.—Read the question.

Q. (Question read.)

A. In reading this over, it is my judgment that this is a copy of the contract introduced in evidence in the case of Griswold against Cobban in the District Court of Missoula County.

Q. I wish you would state, Mr. Draffin—

Mr. WALSH.—We now move to strike out the testi-

(Testimony of William M. Draffen.)

mony of this concerning this matter because it appears that the instrument is a copy and not the original contract inquired about, and it being manifest that it is the purpose of the Government to prove the contract in this manner, we object that the original itself is the best evidence.

Mr. MAYNARD.—In answer to the objection of counsel I desire to have it appear on the records that it has heretofore been made to appear on the records that the original contract itself was one of the conditions—that the surrender of that original contract to Mr. Cobban was one of the conditions precedent to the payment of the money and the settlement of the case, and that the original contract was so delivered to Mr. Cobban, and that a demand has been made upon him to produce it and that he refuses to produce it. That fortunately a true and certified copy of the same was made and preserved by Mr. Griswold, and that true and compared copy is the one that Mr. Draffin now recognizes as a copy of the same.

Mr. WALSH.—We did not intend to argue the case now.

Mr. MAYNARD.—No, I know you didn't.

Q. I wish you would state, Mr. Draffin, what steps were taken by you as attorney for the plaintiff in the case about this settlement?

Mr. WALSH.—Objected to as not proper cross-examination and as immaterial and irrelevant.

(Testimony of William M. Draffen.)

A. I don't understand the question, the extent of just what you mean, what steps. Do you mean from the inception of the matter?

Q. Generally, yes, what was done with the suit?

A. My recollection is that after Mr. Griswold came and presented his claim to Major Duncan and myself, we conferred with him, Griswold, and it was a long account that he claimed that Mr. Cobban was indebted to him on account of services rendered in locating certain timber claims in Missoula County, and I believe Deer Lodge County, and there had been a great many payments and a great many statements made and it required some work, clerical work taking nearly a week, to strike a true account as we thought, and so soon as we had arrived at that conclusion, my recollection is that Major Duncan, who was acquainted with Mr. Cobban (I was not), sent for him and Mr. Cobban came to the office, and the Major told him we had this claim against him, and Mr. Cobban said that he did not owe Griswold a cent. I was present at the time. Major Duncan told him then that we would have to institute a suit—

Mr. WALSH.—We would like to ask counsel to state now what relevancy this have concerning which the witness was interrogated, the matter of communication between this witness and Mr. Zevely.

Mr. MAYNARD.—I have already answered all that I care to, and it appears of record.

(Testimony of William M. Draffen.)

Mr. WALSH.—Are you making this witness your witness or do you suppose he is ours on this subject?

Mr. MAYNARD.—He is yours, but in either event he would tell the absolute truth.

Q. Go ahead, Mr. Draffin.

A. Upon Mr. Cobban's statement that he did not owe Mr. Griswold anything Major Duncan and myself instituted the suit in the District Court of Missoula County, judging that he was indebted, to him in the sum of three thousand odd dollars, I think, for services rendered under this account and set up in the pleadings the contract in substance. The matter was on for some time, and Mr. Griswold was anxious that the matter should go to trial, and we were, and on account of the lack of business at the next term of the Court no jury was called to my recollection, and for that reason the case could not be tried. The matter of Mr. Zevely—as far as Mr. Zevely is concerned, my conduct and my writing to Mr. Zevely had no connection with the case of Griswold against Cobban; it had nothing to do with it, only in so far as the contract as alleged in the pleadings and the extent of it, Mr. Zevely having been an old friend of mine, coming from the same State and same community, I thought that it was due to me—I had only lately been connected with the Government as Assistant United States Attorney—as well as to Mr. Hitchcock—that I should acquaint Mr. Zevely with one instance of what I thought was a violation of the law, and I did it upon my own responsibility, and I per-

(Testimony of William M. Draffen.)

sonally knew nothing about it, did not then and do not now. The letters that I wrote to Mr. Zevely had no connection with the case of Griswold against Cobban; it was foreign to it, and in the letters nothing was said with reference to Mr. Griswold having a case against Mr. Cobban, nor anything about Mr. Griswold—

Mr. WALSH.—We object to the witness giving the contents of this letter. We have asked that this letter be produced, and the Government refused to produce it, and it is not fair to us that on cross-examination a witness should come in and tell the contents of the letter.

The WITNESS.—Well, excuse me; I did not intend to be unfair; I say that it is only fair to me as a witness that I should at least be able to give in substance what it does contain, and I only with the letter was here. Well, it went on as far as the suit of Griswold against Cobban was concerned, and the term went over. At the suggestion of Judge Webster, I believe, as it involved an accounting, the matter was called for trial, and it would take some time, and Judge Webster suggested that the matter should be referred, and it was referred to Mr. Murray, a member of the bar, and in the course of a short time we proceeded to take the testimony before Mr. Murray. During the taking of this testimony, Mr. Griswold, my client, told me that there was an offer being made to settle, and Colonel Marshall suggested that there was a settlement brew-

(Testimony of William M. Draffen.)

ing, and we discussed it, Colonel Marshall representing the defendant as one of the counsel, and Colonel Marshall and myself discussed the matter, and finally it was agreed that we should meet at his—

Mr. WALSH.—We object now to the witness being asked or telling on cross-examination anything at all about the facts in relation to this settlement, that being a matter that counsel on his professional honor, undertakes to say is a proper cross-examination of the matter inquired about by counsel for the defendant It is an entirely distinct and separate subject matter. Counsel for the defendant expressly and because it did not care to make this witness his witness on that branch of the case, refrained from examining him on that subject. This witness was called by the defendant solely for the purpose of getting from him his letter to Mr. Zevely, and Mr. Zevely's letter to him, if there was any such. The defendant particularly refrained from any inquiry of this witness at all concerning the fact of this settlement, and we say again that counsel will not undertake to say here or at any time upon his professional honor that he thinks that this is a proper subject of cross-examination of this witness, and we therefore object to this matter being gone into at this time or at this place with this witness. The Government did not see fit to call this witness as its witness when it was putting in its case in chief concerning the facts of that settlement; it inquired of the principal witness, Mr. Griswold, concerning the facts of that set-

(Testimony of William M. Draffen.)

tlement. If it desired to support Mr. Griswold's testimony concerning the fact of that settlement by testimony from Mr. Draffin, it had ample opportunity to call him at that time. It is not fair to the defendant, and I say again counsel will not assert that it is proper cross-examination on the matter which was inquired about at this time.

Mr. MAYNARD.—Now, I desire to have it appear on this record so that it may appear there for all time, that I do say that under the circumstances of this case, as a lawyer, that it is competent for me to cross-examine this witness on this entire subject matter after it has been once referred to by the defendant through his solicitor. But I say further to relieve them from any embarrassment that may come to them by making this opening, that it is utterly immaterial to me whether Mr. Draffin is regarded as the complainant's witness or the defendant's witness, because in either event Mr. Draffin would simply tell the facts of the case as they are, and if counsel desire I will stipulate with counsel that from this time on Mr. Draffin may be treated as my witness in giving his testimony in the case, if that would be any concession that they cared to avail themselves of.

Mr. WALSH.—Counsel for the defendant are perfectly willing to assume any responsibilities which flow from the inquiry of this witness for the correspondence between him and Mr. Zevely, and we are willing to as-

(Testimony of William M. Draffen.)

sume no further responsibility in the matter, and as to stipulating, we do not care now to stipulate to give the Government any more time to put in its testimony.

Mr. MAYNARD.—Well, I will be quick. Of course, furthermore, after Colonel Marshall has gone on the stand, it would be clearly competent as rebuttal in the case to meet the point that was brought out by him.

Mr. WALSH.—Colonel Marshall was put on to dispute the testimony given by Mr. Griswold. Mr. Stiff will be called probably for the same purpose, if available.

Mr. MAYNARD.—Very well. I am perfectly willing to play fair, and give you something because you need it, but if you are not willing to receive it, we will go on.